THE UNIVERSITY OF CHICAGO

RACE(D) FUTURES: RACE, RISK, AND THE POLITICS OF PREDICTION

A DISSERTATION SUBMITTED TO

THE FACULTY OF THE DIVISION OF THE SOCIAL SCIENCES

IN CANDIDACY FOR THE DEGREE OF

DOCTOR OF PHILOSOPHY

DEPARTMENT OF POLITICAL SCIENCE

BY

EMILY ALEXANDRA KATZENSTEIN

CHICAGO, ILLINOIS

AUGUST 2020

Copyright © 2020
Emily Katzenstein
All rights reserved

TABLE OF CONTENTS

Acknowledgments ..... **iv**

Abstract ..... **vi**

Prologue **1**

Chapter 1: To Each According to their Risk: The Rise of Risk and the Emergence of Actuarial Justice as a Paradigm of Equity **20**

Introduction *20*

The Rise of Risk *27*

Proper Distinctions *37*

Distinction and Discrimination *45*

The Limits of the Civil Rights Vision *57*

Conclusion *64*

Chapter 2: The Credit They Deserve: Race, Risk and Subprime Lending **67**

Introduction *67*

The rise of subprime lending *73*

Risk or Race? *82*

Racing Risk *97*

Conclusion *100*

Chapter 3: Beyond Discrimination: Racial Economic Injustice and the Rule of the Market **103**

Introduction *103*

Critique of Actuarial Justice *107*

Institutional Racism *109*

The Rule of the Market *127*

Conclusion *132*

Epilogue **133**

Bibliography **139**

ACKNOWLEDGMENTS

The best part about writing a dissertation is the conversations you get to have. Over the last six years, the ideas on the following pages developed in conversations with my dissertation committee, faculty members, fellow graduate students, and friends at the University of Chicago and elsewhere. I am especially grateful to Patchen Markell, Michael Dawson, Adom Getachew, and Linda Zerilli for our conversations about risk, race, and prediction, about what I wanted to say and how to write about it, and about the challenges and joys of research. Other faculty at the University of Chicago and elsewhere also generously provided feedback and advice on this project. I would like to thank Ashleigh Campi, Paul Cheney, Robert Goodin, Gary Herrigel, Destin Jenkins, Steven Klein, Ainsley LeSure, Jonathan Levy, Robert Meister, Jodi Melamed, Tianna Paschel, Patricia Posey, John N. Robinson III, William H. Sewell Jr., Inés Valdez, and Lisa Wedeen.

I had the opportunity to present my work at several workshops and conferences where participants provided crucial feedback. I would particularly like to thank the participants of the Historical Capitalisms Workshop and the Political Theory Student Workshop at the University of Chicago, the Kolloquium Politische Philosophie at the University of Zurich, and the Moral, Social and Political Theory Seminar at the Australian National University.

I have benefitted from many conversations with fellow graduate students and friends at the University of Chicago and elsewhere—without them, this dissertation would not exist in its present form and would have been a lot less fun to write: thank you to Stephanie Ahrens, Adam Almqvist, Arwa Awan, Friedemann Bieber, Alysia Mann Carey, Aylon Cohen, Cameron Cook, Leah Downey, Daniel Epstein, Silvia Fedi, Alex Haskins, Dalaina Heiberg, Ann Heffernan, Omiela Hsu, Robert Kaminski, Max Krahé, Jennifer Page, Lucas Pinheiro, Christy Monet, Bob Reamer, Georg Rielinger, Charlotte Robertson, Jonathan Schoots, Sofia Smith, Nazmul Sultan, Larry Svabek and Rose Owen. A particular thank you

to Moira O’Shea, Anahí Wiedenbrüg, and Carla Roth for sharing in the joys and challenges of research and writing, but most of all, for their friendship. A heartfelt thank you! also to Mark Ortlieb and Jennifer Keller for making Chicago feel like home.

Throughout this dissertation, the Race and Capitalism Project has been an intellectual home for me, and the Race and Capitalism predoctoral fellowship supported the last two years of this dissertation. Conversations with Michael Dawson, Megan Ming Francis, Alfredo Gonzalez, and Meghan Wilson have had a lasting impact on my thought and on this dissertation, and I am deeply grateful for their engagement with my work.

Whenever I got stuck with a thought, a doubt, or a contradiction, I sat down with my grandfather’s clunky old typewriter and typed it out in ear-splitting two-finger staccato. He hasn’t been around for a while now, but I hope that some of his clarity made it onto the page. To the rest of my family, to Dora, Nina, Rina, Sara, Sophie, Margret, Hermino and Reinhard: thank you. To Henriette, for her support and insight, and to Julius, für Alles: Danke.

ABSTRACT

My dissertation, *Race(d) Futures: Race, Risk, and the Politics of Prediction,* asks how we think about racial economic justice when it comes to financial markets and institutions. It traces how market-based practices of prediction have reproduced and exacerbated racial economic inequality in the U.S., and examines how anti-racist movements sought to problematize and challenge racial inequality in housing finance and insurance markets. In the first part of my dissertation, I examine historical debates in which predictive practices of financial institutions were contested for being racially unjust. I explore how the relationship between risk, race, and prediction was conceptualized and normatively evaluated. In my case studies, I find that the dominant conception of racial justice in financial markets invoked the idea that for-profit predictive practices are fair when everybody is treated in accordance with their objective risk profile and creditworthiness rather than on the basis of ascriptive racial identities. The implicit or explicit standard of fairness, in other words, was the maxim 'to each according to their risk.' I call this an actuarial conception of justice. Adherence to actuarial justice as an evaluative framework, I argue, has produced a restrictive conception of racial economic justice in financial markets—a conception that continues to echo in contemporary U.S. American political discourse. Actuarial justice falls short of addressing the already extant racialized distribution of risk and creditworthiness that is the result of past racial injustice. It obscures normative questions about how market-based prediction techniques privatize the burdens of past racial injustice and displaces debates about the collective responsibility for an unjust past and present.

The second part of my dissertation draws out the theoretical implications of my historical case studies and puts them in conversation with contemporary debates about racial justice in political theory. I argue that my critique of actuarial justice both resonates with and challenges liberal accounts of racial economic justice. Insofar as it critiques a narrow

understanding of formally equal treatment as an insufficient framework for thinking about racial economic injustice, my critique of actuarial justice resonates with existing normative accounts that foreground institutional racism and historical injustice, such as Tommie Shelby's and Charles Mills' respective accounts. However, I also challenge existing liberal accounts of racial economic justice by arguing that we cannot understand the entrenchment of institutional racism and the active reproduction of historical injustice without analyzing how they relate to core institutional features of capitalist markets, specifically the profit motive and the private nature of practices of valuation. I propose that historical attempts to contest racially unjust predictive practices in financial markets—in virtue of their partial successes, ambivalences, and shortcomings—highlight something that contemporary liberal debates about racial justice have largely neglected: namely, that the for-profit and private nature of practices of valuation reproduces and obscures the economic effects of past racial injustice and the ongoing valorization of whiteness. The market, I argue, plays a key role in reproducing racial economic injustice and shielding it from demands for justification. I conclude by arguing that a more expansive conception of racial economic injustice in financial markets must explicitly politicize practices of valuation and risk assessment and thus touches directly on questions of expanding democratic control over the economy.

PROLOGUE

But it is arguably the material payoff from whiteness, the political economy of race, that is crucial, and the discussion needs to be brought back to these fundamentals.
Charles Mills[1]

The first signs of what was to become the most severe economic crisis since the Great Depression began to appear in 2006. In May, house prices fell for the first time after a long housing boom. Mortgage companies and originators began to totter.[2] In December, Ownit Mortgage Solutions and Sebring Capital Partners LP collapsed. Others followed suit: In 2007, New Century Financial Corporation, Countrywide Financial Corporation, Mortgage Lenders Network USA, and American Home Mortgage all filed for bankruptcy. Many other subprime lenders ceased originating mortgages, stopped their lending operations altogether, or were sold for pennies on the dollar.[3] Out of the 25 biggest subprime lenders, only five remain active today.

The trouble on the housing market sent shockwaves through Wall Street. Rating agencies downgraded mortgage-backed securities. Investors panicked. Stock prices plummeted. Hedge funds, banks, and major insurance companies toppled like pieces in a domino game.[4] By November, interbank liquidity had taken a serious hit and the financial markets began to seize up. In December, the U.S. economy entered into recession. The market in mortgage-backed securities virtually ceased to exist. Issuance of mortgage-backed securities fell from $232

1. Charles W. Mills, *Black Rights/White Wrongs: The Critique of Racial Liberalism*, Transgressing Boundaries. (New York, NY: Oxford University Press, 2017), 120.
2. Kathleen C. Engel and Patricia A. McCoy, *The Subprime Virus : Reckless Credit, Regulatory Failure, and Next Steps* (New York: Oxford University Press, 2010), 67. See also United States. Congress. Senate. Committee on Homeland Security and Governmental Affairs. Permanent Subcommittee on Investigations, "Wall Street and the Financial Crisis : Anatomy of a Financial Collapse : Majority and Minority Staff Report," (Washington, D.C.: Permanent Subcommittee on Investigations, 2011), 213.
3. "The Subprime 25," *The Center for Public Integrity*, May 19 2009.
4. Permanent Subcommittee on Investigations, "Wall Street and the Financial Crisis," 214.

billion in 2007 to a mere $12 billion in 2008. Subprime securitization ceased altogether in 2008, as did Alt-A issuance, and the market in collateralized debt obligations (CDOs).[5] On September 15, 2008, Lehman Brothers collapsed—both a symbol for and portent of the scale and severity of the financial crisis and the ensuing Great Recession.

In the aftermath of the financial crisis, just about everybody scrambled to understand what had happened. Congress investigated.[6] Bankers and quants published confessionals and manifestos for better, more equitable financial markets.[7] And many for whom derivatives, credit default swaps, and collateralized debt obligations were foreign concepts scrambled to catch up on a bewildering world of complex hedges and bets and swaps, a whole financial menagerie.

I quickly became fascinated with trying to understand the ways in which these new financial instruments commodified risks and expectations—partly because the answer key to contemporary politics seemed to be hidden within these labyrinthine modes of commodifying risk, and partly because I hoped that, by understanding them, I would be able to see beyond the politics of technocracy and emergency management that seemed to follow in the wake of the crisis. A couple of years later, when I first came to Chicago, the legacy of the housing crisis was still clearly visible: Many of the neighborhoods around Hyde Park were marked by boarded-up houses and empty lots, ciphers for the devastating economic recession that had hit these communities.[8] When I started studying the aftermath of the financial crisis in more depth, it quickly became apparent that the burden of the crisis had been unequally distributed

---

5. Ibid. Alt-A is a mortgage classification and refers to designates mortgages that are considered riskier than prime mortgages. Alt-A issuance here refers to issuing securities that were backed by Alt-A mortgages. Collateralized debt obligation, short CDO, refers to a financial product whose value is derived from claims to the revenue of bundled loan repayments for asset-backed loans.
6. United States. Congress. Senate. Committee on Homeland Security and Governmental Affairs. Permanent Subcommittee on Investigations, "Wall Street and the Financial Crisis."
7. Riccardo Rebonato, *Plight of the Fortune Tellers: Why We Need to Manage Financial Risk Differently* (Princeton, N.J.; Oxford England: Princeton University Press, 2007).
8. Of course, the financial crisis and the economic recession were only the two latest developments in a much longer history of systematic financial exclusion and exploitation for many of these neighborhoods. Chapter 2, *The Credit This Deserves*, engages this history in more depth.

along lines of race: Black and brown neighborhoods had been hit particularly and disproportionately hard. What puzzled me, at the time, was how highly depersonalized and abstract risk assessment procedures could produce such racially unequal outcomes. Where did race enter the story? How did it structure the process of commodifying risks and expectations about the future? This dissertation examines how this question has been answered and how the answer to this question has shaped the ways in which we think about racial economic justice in financial markets.

There are two ways in which this question is commonly answered: The first focuses on racial bias. It can best be illustrated with the following fictional vignette: Let's imagine a black and a white borrower walk into a bank branch. They share the same risk characteristics: They have the same income, the same credit score, and they are applying for a mortgage with a similar loan-to-value ratio in the same neighborhood. For the intents and purposes of the lending decision, they are interchangeable, differentiated only by the color of their skin. But based on racist beliefs, the loan officer decides to grant a mortgage to the white prospective borrower, while denying it to the black prospective borrower. The loan officer treats the black borrower differently and disadvantageously solely on the basis of race. In other words, she fails to treat the borrower on the basis of an objective assessment of the economic risk and promise that the borrower represents.

This example tells a story about how and why racial distinctions enter risk-making practices. It is a story of prejudice and irrationality. It highlights the use of race as a proxy for risk in instances in which race is *irrelevant* to predicting the risk or future expected value of an investment. It contrasts being treated rationally and fairly, on the basis of economic criteria, with being treated arbitrarily and unfairly, on the basis of one's ascriptive racial identity. The title of a well-known paper about racial discrepancies in subprime lending puts this succinctly. It asks "Race or Risk?" and goes on to examine to what extent racial

discrepancies in subprime lending are attributable to legitimate lending practices that differentiate on the basis of borrowers' risk characteristics rather than to illegitimate lending practices that differentiate on the basis of race.[9] Race and risk are here neatly sorted into a set of dichotomous terms: *race* stands for treatment that is subjective, irrational, unjust, unlawful, and contestable whereas *risk* evokes the objective, rational, just, legal, and incontestable.

But there is also a second approach to the race/risk nexus that is less sanguine about the objectivity of financial risk assessments and instead foregrounds the social construction of creditworthiness and risk. I will refer to this conception of the race/risk nexus as "discriminating risk."[10] Here, the story is not about borrowers being treated unequally by prejudiced loan agents who substitute their racist beliefs for an objective assessment of the relevant economic criteria. Instead, it is a story about how the practices of risk assessment are themselves corrupted by racial bias and prejudice. In this story, risk appears in a different guise: It is not understood as a simple and straightforward reflection of existing social regularities.[11] Instead, risk-making is seen as an active, contingent, and politically contested process.[12] This view holds that technologies used to measure risk are influenced by substantive value judgments that cannot simply be reduced to or explained by an orientation towards predictive accuracy. In his examination of the social construction of risk in the U.S.

---

9. Calvin Bradford, *Risk or Race?: Racial Disparities and the Subprime Refinance Market* (Center for Community Change Washington, DC, 2002). I do not mean to imply that Calvin Bradford examines the problem of racial disparities in subprime lending only from this perspective, merely that the title of his paper sums up this approach quite neatly.
10. I borrow the term "discriminating risk" from Guy Stuart, whose book, "Discriminating Risk" examines the construction of risk and creditworthiness in the U.S. housing finance markets and exemplifies the strengths of this conception of the race/risk nexus. Guy Stuart, *Discriminating Risk: The U.S. Mortgage Lending Industry in the Twentieth Century* (Ithaca, N.Y.: Cornell University Press, 2003).
11. See for example ibid.; Marieke de Goede, "Repoliticizing Financial Risk," *Economy and Society* 33, no. 2 (2004).
12. Much of the sociological literature on the social construction of risk is indebted to Michel Callon's notion of the performativity of economics; i.e., the way in which economic knowledge practices come to shape markets. Michel Callon, ed. *The Laws of the Markets* (Oxford ; Malden, MA: Blackwell Publishers/Sociological Review, 1998).

housing finance market, for example, Guy Stuart argues that "financial risk is an economic language, imbued with the legitimacy of formal rationality, but the risk criteria used to decide who gets a mortgage and who does not lose their formal patina when one investigates their origins and the way they are implemented. Their origins show that the contemporary decision-making rules are a mix of rules of thumb, accepted norms, and theoretical assumptions imposed on reality. […] [T]his does not mean that these rules and practices are irrational or ad hoc, but it does mean that they constitute a version of rationality that is not the only possible one."[13]

There are two ways in which race is most often thought to shape the process of risk-making: First, at the level of risk measures, and, second, at the level of market organization. Economic sociologists and historians of the housing market have documented the ways in which judgments about racial worth enter the development of measures designed to predict investment risk. Redlining is probably the best-known example. Redlining refers to the use of the racial composition of a neighborhood as a criterion for lending decisions.[14] During the first half of the 20th century, for example, the Federal Housing Agency (FHA), used an evolutionary model of neighborhood decline, developed at the University of Chicago, as the basis for enforcing segregation, and refused to lend in so-called "transitioning neighborhoods."[15] Beliefs about racial worth became the basis for risk assessments. FHA risk assessors were instructed to "investigate areas surrounding the location to determine whether or not incompatible racial and social groups are present, to the end that an intelligent

13. Stuart, *Discriminating Risk: The U.S. Mortgage Lending Industry in the Twentieth Century*, 2.
14. The history of redlining is a complicated and contested one. The Home Owners Loan Corporation (HOLC) is often blamed for "pioneering" the use of the racial make-up of a neighborhood as a means to assessing default risk. Jackson's *Crabgrass Frontier* is most commonly cited as the source for this claim. But Jackson himself makes a more careful claim, arguing that HOLC pioneered the use of race as a proxy for risk but did not exclude so-called "transitioning" or predominantly non-white neighborhoods from its underwriting practice. In other words, it did not use the racialized risk measures to exclude purportedly "high-risk" neighborhoods from lending altogether. I explore this history in more detail in Chapter 2. See Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (New York: Oxford University Press, 1985).
15. Calvin Bradford, "Financing Home Ownership: The Federal Role in Neighborhood Decline," *Urban Affairs Quarterly* 14, no. 3 (1979).

prediction may be made regarding the possibility or probability of the location being invaded by such groups. If a neighborhood is to retain stability it is necessary that properties shall continue to be occupied by the same social and racial classes."[16] In contrast to the previous conceptualization of the race/risk nexus, in which the racist beliefs of an individual loan officer, for example, distort an objective risk assessment, notions of racial worth are here "baked into" formal risk assessment technologies. In the case of the FHA risk assessor, for example, it was irrelevant whether the risk assessor shared the agency's conceptions of the relationship between property values and racial segregation. Even if the FHA assessor 'merely' followed the manual, the racial composition of a neighborhood—or his expectations about the likely development of the racial composition of the neighborhood—would shape the risk assessment.[17]

Redlining as official FHA policy ended in 1948, following a Supreme Court ruling that declared it unconstitutional.[18] However, research suggests that racially inflected notions of worth and creditworthiness continue to inform risk assessment techniques and procedures. For example, in "Discriminating Risk," Guy Stuart shows how institutionally entrenched norms for assessing creditworthiness in the Chicago housing finance market produce racial disparities in loan denial rates. He argues that automated risk assessment practices exhibit similar tendencies, and suggests that risk assessment technologies, such as credit scores, might not be equally predictive across lines of race.[19]

---

16. United States. Federal Housing Administration, "Underwriting Manual: Underwriting Analysis under Title II, Section 203 of the National Housing Act," (1936).
17. I use the gender advisedly.
18. *Shelley v. Kraemer*, 334 U.S. 1 (1948)
19. Stuart, *Discriminating Risk: The U.S. Mortgage Lending Industry in the Twentieth Century*, 173-74. There is some ambiguity in Stuart's account. For the most part, Stuart focuses on exposing how risk assessment techniques and procedures are not equally predictive across lines of race. On this basis, he makes an argument that, in many ways, resembles mine: namely, that economic decisions about "who gets a mortgage and who does not" are also political decisions, and can therefore be contested. Stuart presents a fascinatingly complex and in-depth account of the decision-making process in mortgage lending. However, in explicating the ways in which the construction of risk produces racial disparities in lending, he sometimes fails to distinguish between two related, but separate issues: First, the idea that risk assessment technologies use norms, rules of thumb, or automated quantitative measurements that are either racially inflected or produce racially disparate outcomes;

Second, economic sociologists, geographers, and historians of the housing market—as well as a handful of economists—have also stressed market structure as a source of "discriminating risk". They have argued that the housing finance market often fails to enforce market discipline, and thus enables racial discrimination by lenders. In an ideal market, lenders would have no choice but to treat people exclusively in accordance with their objective creditworthiness. If they fail to do so, the theory goes, a competitor will offer a better product to the prospective borrower, and corner a larger market share.[20] However, as many scholars of the housing market have pointed out, there is little to suggest that the actually existing housing finance market resembles this theoretical construct.[21] Instead, market failures make it possible for lenders to exploit vulnerable borrowers. In the run-up to the subprime crisis, for example, independent mortgage companies took advantage of existing racial segmentations in the lending market to target minority neighborhoods and steered borrowers into highly exploitative contracts. In an infamous case, Wells Fargo created an entire loan department tasked with issuing "ghetto loans."[22]

So far, I have sketched two common ways of conceptualizing how racial ideology informs and inflects risk assessment processes: The first conceptualization focuses on how racial beliefs inflect individual or institutional applications of otherwise neutral risk-assessment technology. In the second case, the tools of risk assessment themselves are under

---

that fail, in other words, to be equally predictive across lines of race, and second, the idea that risk assessment practices *are* equally good at predicting outcomes across lines of race, but nonetheless produce disparate outcomes because they reflect a racially unequal society, and that this constitutes an unfair way of distributing the burdens of past and present injustice. See, for example, ibid., 178.

20. See Gary Becker's Discrimination Economics for a theoretical exposition of this position. Gary Becker, *The Economics of Discrimination* (Chicago, IL: University of Chicago Press, 1971).

21. See, for example Gary A. Dymski, Jesus Hernandez, and Lisa Mohanty, "Race, Power, and the Subprime/Foreclosure Crisis: A Mesoanalysis," *Levy Economics Institute of Bard College Working Papers*, no. 669 (2011); Daniel Immergluck, *Credit to the Community: Community Reinvestment and Fair Lending Policy in the United States* (ME Sharpe, 2004); Keeanga-Yamahtta Taylor, *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership*, Justice, Power, and Politics. (Chapel Hill: University of North Carolina Press, 2019).

22. Michael Powell, "Bank Accused of Pushing Mortgage Deals on Blacks," *New York Times* 7 (2009); David Cavell, "Ghetto Loans: Discrimination against African American Borrowers in Mortgage Markets and the Impact of the Ibanez Decision," *Georgetown Journal of Legal Ethics* 25, no. 3 (2012).

scrutiny: risk assessment practices rather than individual judgments are inflected by racial prejudice or bias. The latter approach, in particular, has proven generative because it has partially politicized risk-making practices by depicting existing risk assessment technologies not merely as reflective but as productive; not simply as sites of technocratic governance but as politically contested practices that have clear distributive consequences.[23] Both of these conceptualizations of the race/risk nexus—namely, individual racial bias and the use of arbitrary risk criteria that produce a racially disparate impact—highlight important and distinct aspects of the production of racial economic inequality in the commodification of risks and the prediction of future value.

But despite the fact that they illuminate two distinct facets of the reproduction of racial economic inequality in financial markets, I argue that when these conceptualizations of the race/risk nexus are deployed to trouble racial economic inequality in financial markets, they often share an important underlying commitment: namely, the notion that risk-making practices—from the loan agent to the risk assessment technologies that are used to predict default risk to the market in which such risk assessments take place—should be governed by the maxim "to each according to their risk." I call this an actuarial conception of justice.[24] Actuarial justice stipulates that financial markets and institutions are fair when individuals are treated in accordance with their risk profile.

In the following, I will argue that a conception of actuarial justice—the idea that everybody ought to be treated in accordance with their statistical expectations—has become a dominant way of evaluating the race/risk nexus in the American political imagination. It has not only become common sense in many discourses about racial practices by financial institutions, but has also informed oppositional discourses that have sought to challenge the

23. I will explore this theme in more detail in the first chapter.
24. Actuarial justice is a play on the term "actuarial fairness" that is used in the literature on insurance ethics. Cf. Xavier Landes, "How Fair Is Actuarial Fairness?," *Journal of Business Ethics* 128, no. 3 (2015).

reproduction of racial economic inequality in and through credit and insurance markets—as I shall show in chapter 1, "To Each According to Their Risk," and chapter 2, "The Credit They Deserve."

I argue that the focus on actuarial justice as the underlying normative commitment of challenges to the production of racial economic inequality in financial markets generates a restrictive understanding of what racial economic justice requires. There are two problems with conceptualizing and contesting the production of racial economic inequality through the lens of actuarial justice. First, by making the existing risk distribution a standard of fairness, only those aspects of the for-profit predictive practices that constitute a deviation from treating people in accordance with their risk characteristics appear as unjust and illegitimate. This obscures questions about how the distribution of risks arose in the first place. In other words, it obscures corrective justice concerns. Second, a commitment to actuarial justice locks the political debate into a familiar pattern of contestation, with two sides disagreeing about whether racially disparate outcomes of for-profit predictive practices reflect an economically rational response to an actually existing risk distribution or whether they reflect arbitrary treatment on the basis of race. Arbitrary treatment on the basis of race is most commonly thought to be established when no plausible risk factors can explain disparate outcomes. The (alleged) use of racial categories—or proxies for racial categories—is thus depicted as a distortion of the underlying economic logic; the 'racialization of risk-making practices' is characterized as the sudden breakthrough of the irrational into a sphere of economic rationality, the subjective into the realm of the objective. This focuses critical attention on those cases in which the use of race displaces economic considerations and obscures the possibility that the use of race as a proxy for risk is an expression of rather than a deviation from economic rationality.

However, in this dissertation, I contend that race and risk are not merely linked at the

level of mistaken beliefs about putatively existing social regularities that are derived from racist conceptions of differential worth, ability, or deservingness. Race and risk are also linked at the level of actually existing social regularities that are commonly considered in risk-making practices, due to the way in which race, as a political category of differential empowerment, has structured and continues to structure economic outcomes. Looking at the race/risk nexus through the lens of actuarial justice therefore displaces an important aspect of the problem: namely, that the social regularities that are reflected in risk assessments—albeit not in an uncomplicated or straightforward way—are themselves shaped by race. This has been consistently true in the U.S., where economic outcomes, including outcomes in labor markets and housing markets, and economic measures such as family wealth and social mobility, are structured by race. The U.S. American economy is profoundly segregated and produces severely unequal outcomes for groups that are racialized as subordinate, particularly for black Americans. African Americans face higher unemployment rates,[25] earn less,[26] and have significantly less wealth than their white counterparts. Racial economic inequality is so profound that Lawrence Mishel has suggested that there is no such thing as "an American economy."[27] The regularity with which race structures economic outcomes is due, in large part, to past racial injustice and the pervasive valorization of whiteness, i.e., due to the way in which whiteness—white people, and white spaces—is valued in economically meaningful ways, while non-white spaces and non-white people are devalued.[1] Race has, in other words, become a rule of the 'game' that 'players' can anticipate. In the following, I will refer to this as the 'rule of race.'

---

25. Devah Pager, *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration* (Chicago: University of Chicago Press, 2007), 98.. See also Bruce Western and Becky Pettit, "Black-White Wage Inequality, Employment Rates, and Incarceration," *American Journal of Sociology* 111, no. 2 (2005).
26. Michael C. Dawson, *Not in Our Lifetimes: The Future of Black Politics* (Chicago; London: University of Chicago Press, 2011), 120-22.
27. Lawrence Mishel, *The State of Working America*, ed. Josh Bivens and Elise Gould, Economic Policy Institute (Ithaca, NY: Cornell University Press, 2012), 41.

If, however, economic outcomes are structured by race, and whiteness does have an economic value, as scholars such as W.E.B. Du Bois—or, more recently, Cheryl Harris and Charles Mills—have argued; if the valorization of whiteness and the devaluation of blackness can be anticipated, then it would not be surprising—albeit very much worthy of moral condemnation—if it were considered in the assessment of risks and future returns.[28] In other words, if social regularities – on the basis of which risk measurements are made – are shaped by race, it would stand to reason that there are economically rational uses of race as a proxy for risk.

There are, therefore, two distinct ways in which race and risk are linked at the level of actually existing social regularities: On the one hand, past disadvantage that is due to differential treatment on the basis of race has shaped the distribution of observable risk characteristics. That means that even if everybody is treated on the basis of their risk profile or creditworthiness, this cements ongoing past injustice. In the last chapter of this dissertation, I elucidate why this should not merely be seen as the passive reproduction of past injustice but should instead be understood as an active production of such injustice. On the other hand, risk assessment practices may also reflect the 'rule of race' in a different way: namely as the anticipation of the pervasive racism that structures economic outcomes for those who belong to a racialized and subordinated group—in other words, as the anticipation of what I, following Cheryl Harris, call the 'valorization of whiteness.'[29] It seems plausible that such considerations—which cannot adequately be captured in observable non-racial risk characteristics—may also play a role in risk assessment processes. Consider my earlier

---

28. W. E. B. Du Bois, *Black Reconstruction in America* (New York: Simon & Schuster, 1995); Cheryl I Harris, "Whiteness as Property," *Harvard Law Review* 106, no. 8 (1993). Charles W. Mills, *From Class to Race: Essays in White Marxism and Black Radicalism* (Lanham, Md.: Rowman & Littlefield, 2003). Of course, Du Bois' famous formulation of the "wages of whiteness" refers to both economic and psychological benefits of whiteness, as does Cheryl Harris' notion of "whiteness as property." While I here focus exclusively on the economic aspects of the valuation of whiteness, I do not mean to reduce the valuation of whiteness to its economic dimensions.
29. Harris, "Whiteness as Property," 1713. I will use 'valorization of whiteness' and 'valuation of whiteness' interchangeably.

example of redlining. Most critiques of redlining focus on how the FHA (and HOLC, previously) introduced racial considerations into the housing market, or, at least, cemented and expanded racial practices by the real estate industry. As my previous example makes clear, there are many ways in which the use of the racial make-up of a neighborhood did not constitute an extension of an already extant economic logic or a reasonable anticipation of future economic trends. For example, the FHA's policy of refusing to lend in predominantly black neighborhoods did not make good economic sense in de facto segregated cities where black demand for housing was extremely high. There were many middle-class black families who could have afforded homes, and the FHA exacerbated the problem of a black housing shortage by rigidly enforcing segregation. In this sense, the FHA clearly constructed risk measures that were not predictive. They did not anticipate future economic trends but instead shaped the housing finance market so powerfully that FHA risk assessments became self-fulfilling prophecies.

Even in the case of redlining, however, the race/risk nexus cannot be entirely conceptualized as the arbitrary use of race as a proxy for risk. The normative wrong of the FHA's practices is not reducible to those aspects of their practices that did not reflect or adequately anticipate market outcomes. Even if the FHA had simply sought to predict the risk of lending in different neighborhoods, the agency would have had financial reasons to anticipate that lending to black borrowers in white neighborhoods would likely produce a violent backlash, including attacks against persons and property and white flight. Let us imagine, for a moment, that the FHA had developed racially differentiated risk-making practices on the basis of these dynamics, rather than on the basis of extra-economic commitments to white supremacy (and I would argue that it was probably both, although the former appeared in the guise of a pseudo-scientific theory that rationalized the dynamics at play): There is clearly something normatively troubling about the development of racially

differentiated risk-making practices, but the wrong here cannot simply be described as arbitrary treatment on the basis of race due to extra-economic racist beliefs.[30] It is admittedly hard to think through this counterfactual because the FHA's own policies exacerbated some of the logics at play here. And I do not mean to suggest this counterfactual as a way to exculpate the FHA. Instead, I simply seek to illustrate that, given a widespread pattern of the valuation of whiteness, and the devaluation of blackness, conceptualizing the problem as one of arbitrary treatment on the basis of race by a particular institution or a particular individual will only ever capture *a* facet of the race/risk nexus.

We have become accustomed to contesting race as myth and irrationality. But when it comes to analyzing the intersection of race and risk, the focus on identifying those practices that can be described as arbitrary treatment "solely on the basis of race" and the tendency to problematize unequal treatment as economically irrational, underestimates the scale of the problem. It identifies the racial practices of individual institutions as the core problem rather than targeting the widespread valorization of whiteness and the racialization of social regularities.

Moreover, it leaves the tension between demands for racial economic injustice and for-profit risk-making practices unacknowledged. If risk measures are developed in a system in which they have to be profitable, past injustice and unjustly low statistical expectations will become the basis of unequal treatment in the present. Ultimately, this results in the privatization of the financial costs of past racial injustice and the privatization of unjustly low statistical expectations. In this dissertation, I argue that it is crucial to acknowledge and openly contest this aspect of the articulation of race and risk-making practices. An exclusive focus on racial practices as economically irrational narrows and muddies our understanding

30. For an account of the pseudo-scientific theories that rationalized the dynamics at play, see Bradford, "Financing Home Ownership: The Federal Role in Neighborhood Decline."

of the problem. Therefore, instead of focusing primarily on showing that race is *not* predictive of risk, I will argue that the use of race as a proxy for risk constitutes a wrong *even if* race is predictive of risk.

In this dissertation, I am not considering the race/risk nexus abstractly. Instead, I examine historical examples in which racially unjust predictive practices were called into question and contested. My case studies focus on the distinctive role that anti-blackness has played in the social construction of risk and creditworthiness. The focus on anti-blackness is both a product of the examples that I have chosen and the centrality of anti-black racism in the racialization of predictive practices in the markets I examine. Of course, this does not mean that my analysis of the race/risk nexus cannot be extended to other forms of racialization; however, such an extension would require a historically specific account of the articulation of that form of racialization and risk-making practices.

My first case study deals with an early challenge to the race/risk nexus. In the 1880s and 1890s, black state legislators and early civil rights activists successfully campaigned for state legislation "to prevent discrimination against persons of color"[31] in Massachusetts, Connecticut, Ohio, Rhode Island, New York, New Jersey, Michigan, and Minnesota. I examine the ways in which these early civil rights activists challenged the use of race as a proxy for risk and I argue that they relied on a notion of actuarial justice. Their challenge to the use of race as a proxy for risk prefigured later, more prominent challenges of the use of racial categories in for-profit predictive techniques. While these early civil rights activists achieved an important victory, and successfully contested the private power of life insurance companies to make, classify, and price risks at their discretion, they relied heavily on denying

31. "Prevent Discrimination by Life Insurance Companies Against Persons of Color," *Acts and Resolves passed by the General Court of Massachusetts* (Boston, 1884), Chap. 235, 194-195.

the very existence of a racialized risk distribution, and presented their challenge as one that sought to realize the maxim “to each according to their risk.” This strategy, I argue, produced some important conceptual blind spots. First, it did not adequately theorize the social nature of risks and the ways in which the existing risk distribution had already been shaped by past racial injustice. Second, while it established an important precedent of challenging the private power over the “means of predictions,” as Ivan Ascher has put it, it also limited public oversight over the means of prediction to the enforcement of the predictive accuracy of risk assessment practices.[32]

The second case study examines a debate much closer to the contemporary moment, namely the debate about racial discrepancies in subprime lending in the run-up to the 2007/2008 financial crisis. While the discourse on race and racial justice obviously differs from the debates in the late 19th century, there are nonetheless important continuities with regard to how racial economic injustice in the commodification of risks was conceptualized and articulated. Although these debates were informed, as one might expect, by a far more sophisticated understanding of the social construction of financial risk, the majority of attempts to challenge or problematize racial discrepancies in subprime lending nonetheless appealed to an underlying notion of actuarial justice. It most commonly took the form of a critique of predatory lending. Critics charged that unscrupulous lenders exploited market inefficiencies that resulted from the racial segmentation of the housing finance market.[33] The debate about predatory lending, however, focused on the question of whether people were being treated in accordance with a pre-existing risk distribution, or, were instead being treated on the basis of their racial identity. This obscured questions of corrective justice and limited democratic control over risk-making practices.

32. Ivan Ascher, *Portfolio Society: On the Capitalist Mode of Prediction*, Near Futures. (Brooklyn, New York: Zone Books, 2016).
33. Daniel Immergluck, *Credit to the Community : Community Reinvestment and Fair Lending Policy in the United States*, 2nd ed. (London; New York: Routledge, 2015), 105ff.

However, while I critique the limits of how racial economic justice was conceptualized in these two cases, I also argue that these historical debates about the race/risk nexus succeeded in challenging the private nature of risk-making practices, and thus partially politicized risk-making practices. In the case of the struggle against racial practices by the life insurance industry in the late 19th century, for example, efforts to pass anti-discrimination legislation resulted in strengthening a claim that public power can be legitimately exercised to assess the risk-making practices of private life insurance companies. Here, early civil rights activists successfully contested the right of insurance companies to make and assess risks at their own discretion. This constituted an important advance in the struggle to assert public power over risk-making practices. There are ongoing political struggles that are reminiscent of such early struggles against the private power over risk-making practices, such as the struggle over the terms of the Home Mortgage Disclosure Act (HMDA). The HMDA, originally passed in 1975, mandates that lending institutions must disclose information about their lending practices that allows for an assessment of their lending patterns according to the race, ethnicity, and gender of borrowers.[34]

These efforts to extend public control over risk-making practices constituted important advancements in the politicization of risk-making practices. However, I argue that the public control over risk-making practices that they envisaged and partially established remained limited to governing private risk-making practices in accordance with an objective distribution of risk and creditworthiness. Implicitly, this approach assumed that public power over risk-making practices was to be exercised in order to govern and constrain the arbitrary

---

34. When the HMDA was passed in 1975, it merely required lenders (with the exception of small lenders with total assets of under $10 million) to collect and disclose data on the geographic distribution and the demographic make-up of housing-related loans. Since amendment of the HMDA in 1989, lending institutions have also been required to record ethnicity, race, gender and income of housing-related loan activity. The coverage of HMDA expanded to all lending institutions, including non-depository lenders whose loan origination volume in the mortgage market exceeds $10 million and have branches in MSAs. Further regulatory amendments were passed in 1991, 1992 and 2002.

actions of individuals or institutions who made lending decisions on the basis of arbitrary racial criteria. It sought to deploy public power in the service of market discipline, seeking to enforce risk-based lending practices.

This approach had recourse to the market as a regulative ideal, not as an actually existing market, but as a perfect preference aggregation machine. In this dissertation, I argue that even this "ideal" market, in which institutions do not engage in racial discrimination, will, given the widespread valorization of whiteness, result in the privatization of the financial burdens of past and present injustice. In order to counter an already constituted form of racialized economic logic, I argue, it is not sufficient to enforce lending that accords with pre-existing social regularities. Instead, racial economic justice requires that practices of valuation and risk assessment are seen as sites of political struggle that admit of demands other than formally equal treatment in accordance with objective risk criteria. As I argue in chapter 3, this requires challenging core institutional features of capitalist markets, including the profit motive and the private nature of valuation.

It is, therefore, not sufficient to subject risk-making practices to public control in order to enforce predictive accuracy. Instead, a broader democratization of the economy that aims to abolish the rule of race is required.[35] This would necessitate an expansion of public power over practices of valuation and risk assessment, not in order to enforce their conformity with existing regularities, but, instead, in order to transform underlying unjust social regularities and shape the way in which value is posited collectively. In other words, it

35. At first glance, this may seem to require that we abandon prediction as such. After all, if tools are to be predictive, they must necessarily reproduce existing social regularities, including those that are unjust. But nothing so outlandish is required. There are a number of different ways in which one might seek to transform the practices of valuation and risk assessment in order to abolish the rule of race: For example, it is possible to sever the link between individual financial responsibility and individual risk. This would, in effect, abolish competition on the selection of the "best risks." In the insurance market, to take a straightforward example, this could be accomplished by abolishing a private market in insurance altogether, but it could also, conceivably, be accomplished by legislating competition on the basis of risk selection out of existence, and adopting a model where insurance payments are calculated on the basis of one's ability to pay, and private insurance companies compete on the basis of services rather than on the basis of their selection of risks. Such a step would also diminish the status of one's statistical expectations as private property.

would require a democratization of risk-making and valuation practices that actively seeks to counter the valorization of whiteness and the devaluation of blackness. Therefore, I see demands for racial economic justice as necessarily involving a democratization of the economy.

However, expanding democratic control over practices of valuation has, more often than not, been eschewed in favor of a retreat to what I call the 'rule of the market.' By the 'rule of the market,' I mean an anti-democratic political relationship to core features of the capitalist market, namely the profit motive and the private nature of valuation. I argue that the rule of the market constitutes an abrogation of democratic self-rule, the enthronement of an already extant economic logic, and a retreat from democratic power. I posit that this retreat is often a *deliberate* retreat from the possibility of reshaping the extant economic logic because such a reshaping would require relinquishing the economic advantages of white supremacy for those who currently benefit from it.

The market, in its present configuration, will dictate the reproduction of racial economic inequality. This is not due to an inevitable logic. It occurs because the present economic logic has been shaped in such a way—in many cases, intentionally—and because the responsibility to reconfigure economic rationality and the practices of valuation in such a way as to abolish the rule of race, has, in almost every instance, been rejected in favor of a fantasy of justice that costs nothing. The responsibility to govern economic practices in accordance with the goal of overcoming the rule of race is abrogated in favor of a nameless rule of the market that reproduces an existing distribution of resources, seemingly without an author. This does not simply abrogate the responsibility to abolish the rule of race; it also engages in a dangerous fantasy of powerlessness. It is an exercise of self-delusion because it pretends that this is simply how the market operates and refuses any responsibility for the shape that economic rationality takes. Ultimately, it abrogates a form of collective self-rule in

favor of the spoils of white supremacy.

Chapter 1: To Each According to their Risk: The Rise of Risk and the Emergence of Actuarial Justice as a Paradigm of Equity

Introduction

This chapter traces how a particular understanding of racial justice emerged historically in the interstices of emerging financial practices and racial ideology. To this end, I turn to one of the earliest U.S. American struggles over racial practices by financial institutions in the post-Emancipation era, namely the contestation of racially discriminatory practices by life insurance companies in the late 19th century. In the 1880s and 1890s, early civil rights activists, most notably Julius Chappelle, Jere Brown, T. Thomas Fortune, and T. McCants Stewart contested race-based premiums in the life insurance industry. Their efforts resulted in the passage of anti-discrimination legislation in Massachusetts, Connecticut, Ohio, Rhode Island, New York, New Jersey, Michigan, and Minnesota between 1884 and 1895.

Albeit this example might seem arcane at first glance, I argue that the struggle against discrimination by life insurance companies deserves close attention because it marks the emergence of a hegemonic—and intransigent—conception of racial economic justice that continues to shape contemporary debates about what constitutes racially unjust financial practices. Moreover, these early debates about the relationship between risk and race evince key conceptual quandaries that continue to beset contemporary debates about the relationship between racial economic inequality and the practices of risk assessment and valuation by financial actors.

In the second half of the 19th century, many Americans encountered practices of commodifying individual statistical expectations, such as the commodification of mortality risks in the life insurance industry, for the first time. Life insurance, after all, only made serious inroads into the U.S. American market in the 1830s, and did not become widely

available to working-class Americans before the 1870s, when insurance companies first began offering so-called "industrial insurance."

These novel practices of commodifying risks on an individual basis raised critical questions about what constituted fair or just risk-making practices. At first glance, questions about fairness or justice might seem to have little to do with actuarial tables and risk assessment practices. It is tempting to think of all things economic as rational, sober affairs, driven by the desire to maximize profit and quite devoid of moral niceties. In fact, insurance can seem like a particularly apt example of this because it has all the trappings of the rational and objective: a sophisticated apparatus for the quantification of social life, fine-tuned classificatory systems, and complex algorithms to determine, assess and predict risks. Surely, it seems, this crowds out all mushy moral notions; it is the realm of the cool-headed businessman who follows the money rather than morality. But an analysis of the public debate about the commodification of "life risks" during the 19th century reveals that risk commodification practices not only *relied* on conceptions of equity but decisively *shaped* conceptions of equity.

In this chapter, I argue that a particular discourse emerged around the moral economy of risk that maintained that fair risk-making practices ought to treat individuals in accordance with their individual statistical expectations. In other words, 'to each according to their risk' was declared a principle of fairness. I here refer to this conception of fairness in risk-making practices as "actuarial justice," because it transforms actuarial categories—the ways in which individuals are classified as risks—into an evaluative principle of equitable treatment. Actuarial justice therefore holds that financial institutions are fair when they allocate financial responsibility in accordance with individuals' risk profile, as determined by the average risk of the group to which persons belong by virtue of stable characteristics.

I further argue that this actuarial conception of justice in risk-making practices shaped

the struggle against race-based premiums decisively. The debate about discrimination in life insurance, I maintain, allows us to trace the emergence of a conception of racially just for-profit predictive practices as ‘equal treatment given equal risk profiles’ that can best be understood as a version of actuarial justice. This chapter traces one—but not the only—origin point of contesting the racially unequal effects of practices of risk assessment and valuation by financial actors by appealing to the principle “to each according to their risk.” Early civil rights activists had recourse to the logic of actuarial justice and argued that race-based premiums constituted a violation of its precepts. Against industry representatives, who claimed that race was relevant to the assessment of individual mortality risk, advocates of anti-discrimination legislation denied that race constituted a pertinent proxy for risk assessments. I trace the implications that this reliance on actuarial justice had for emerging conceptions of racial justice, and I argue that actuarial justice as a normative framework for a just distribution of financial responsibility for risk came to define what the “abolition of the color line” could mean in insurance markets.

On the one hand, Chappelle, Brown, Fortune, and Stewart pioneered the contestation of private classificatory power. Implicitly or explicitly, they argued that the state had a legitimate role in overseeing the predictive accuracy of the risk classifications that private companies employed in order to address unequal treatment on the basis of race. On the other hand, they did so by claiming that the use of race as a proxy for risk was irrational—and that it did not correspond meaningfully to mortality risks. Rhetorically, this was a winning strategy, not least because it presented anti-discrimination as requiring equal treatment given equal conditions and thus as compatible with the private markets in “life risks.” Racial justice, it appeared, was perfectly compatible with the logic of the market. The state would have to supervise risk classifications only insofar as they deviated from the outcome that a perfectly rational market should have produced: namely, the use of classifications that

corresponded meaningfully to risk.

The trouble with this way of conceptualizing racially just predictive practices in for-profit risk markets was that it relied on the assumption that there truly was no link between race and mortality risk. It left these early civil activists with no possibility for addressing or even conceptualizing the notion that race might be predictive of risk—not, of course, due to some objective reality of race as a biological trait, as some insurance industry representatives liked to argue—but due to the legacy of slavery, widespread political, economic and societal discrimination and the negative effects of pervasive racism on the health outcomes of black Americans. This conceptual lacuna made it impossible to subject risk-making practices to demands for corrective justice rather than equal treatment given equal conditions (i.e., equal statistical expectations)—demands that the unequal distribution of risks be shared collectively rather than privatized.

The legacy of this early example of contesting private predictive power is therefore ambivalent. On the one hand, this early civil rights struggle had an under-appreciated radical edge by contesting private economic power and subjecting it to critical scrutiny and making racial justice a criterion for the evaluation of racially just predictive practices. On the other hand, the conception of racial justice that it advanced, and according to which it evaluated the fairness of for-profit predictive practices, was narrow and obscured questions of corrective justice. Moreover, it established a rhetorical strategy that focused on critiquing the irrationality of using race as a prediction for risk. While many of the racial practices of the insurance industry may well have been rooted in irrational racial myths, contesting the irrational use of race as a predictor of risk could never address the full scale of the problem in a society structured as deeply by race as the post-Emancipation U.S. Finally, it entrenched the notion that racially just predictive practices were compatible with a private market in risk.

This ambivalent legacy is still with us, and the framing of racial economic injustice in

financial markets through the lens of actuarial justice continues to haunt our contemporary political imagination. The focus on the *economic irrationality* of racism continues to be a core component of debates about racially unjust predictive practices in financial markets. The second chapter, "The Credit They Deserve," will analyze the contemporary echoes of an actuarial conception of racial justice in financial markets in more depth. It will show that actuarial justice continues to be the dominant framework for thinking about what constitutes racially just, for-profit practices of risk assessment and valuation. While irrational uses of race as a proxy for risk are doubtlessly still pervasive, centering the critique of racial economic injustice in financial markets on this aspect tends to displace the more fundamental question about how to address the objective link between race and risk in a society structured by past and present racial injustice.

Analyzing this origin point of an actuarial conception of racially just predictive practices is therefore important for two reasons: First, it traces the emergence of a discourse about racial economic justice that remains influential today and allows us to uncover some of the conceptual blind spots of this discourse. Second, focusing on the debate about discrimination in life insurance also contributes to the literature on black economic thought after Reconstruction. When considering economic struggles in the late 19th century, one tends to think about movements that contested economic relations by focusing on the categories of land and labor, rather than on classificatory power and practices of valuation. The onset of industrialization had raised crucial questions about labor's place in the republic, while Emancipation had raised crucial questions about land. But this analysis demonstrates that risk, in addition land and labor, constituted a site of political contestation. While the terms of that contestation may have been limited in important ways, it shows that practices of classification and prediction were recognized as important economic practices and politically contested. It also, I argue, opens up a new way of framing the relationship between civil

rights struggles and struggles for racial economic justice. As Susan Carle has pointed out, the civil rights movement[1] in the 20th century—and, by implication, its predecessors, such as early civil rights activist in the late 19th century—is often accused of having focused too much on civil and political rights at the expense of economic concerns.[2] I would here also like to suggest that this critique misfires when applied to the case of the Afro-American League's struggle against discrimination by the life insurance industry. This is not because the Afro-American League's 'radical roots' are waiting to be uncovered, but rather because civil rights legislation itself constituted a particular mode of contesting economic power and economic relations. The bifurcation between civil rights activism and struggles for economic justice, I contend, is unhelpful here. It obscures the way in which early civil rights discourse itself developed a grammar of contesting economic power. Rather than framing civil rights activism in opposition to struggles for economic justice, I understand civil rights activism as entailing a particular way of contesting economic power, albeit one that is limited in certain ways.

This way of contesting economic power through a public intervention in the economy, I argue, presents an alternative tradition to the two doctrines most commonly associated with black elites around of the turn of the century—namely the doctrine of "thrift and industry," most famously represented by Booker T. Washington, that sought to contest race-based economic subjugation through building up private economic power through black business

---

1. When I speak of the civil rights movement, I am referring to the civil rights movement in the 20th century. I will commonly refer to the political activity of Chappelle, Stewart, Fortune et al. as civil rights activism, given that it is difficult to speak of a full-fledged movement, and to differentiate it from the modern civil rights movement.
2. A number of historians, have, of course, sought to rebut this portrayal by stressing the 'radical' roots of the civil rights movement. See, for example, Risa L. Goluboff, *The Lost Promise of Civil Rights* (Cambridge, Mass.: Harvard University Press, 2007). Glenda Elizabeth Gilmore, *Defying Dixie: The Radical Roots of Civil Rights, 1919-1950*, 1st ed. ed. (New York: W.W. Norton & Co., 2008); Martha Biondi, *To Stand and Fight : The Struggle for Civil Rights in Postwar New York City* (Cambridge, Mass.: Harvard University Press, 2003); Hall Jacquelyn Dowd, "The Long Civil Rights Movement and the Political Uses of the Past," *The Journal of American History* 91, no. 4 (2005); Aldon D. Morris, *The Origins of the Civil Rights Movement : Black Communities Organizing for Change* (New York; London: Free Press; Collier Macmillan, 1984).

ventures but did not place much hope in a public reordering of economic relations, on the one hand, and the anti-materialist critique of American capitalism by the likes of Alexander Crummell and W.E.B. Du Bois, on the other.

The following chapter will be structured as follows: In the section *The Rise of Risk*, I historicize actuarial justice by defamiliarizing its way of conceptualizing risk and trace the historical roots of notions of individual responsibility for financial risk. I show that the risk-making practices in private markets raised moral quandaries for 19th century Americans and were met with resistance and alternative, solidaristic risk-management practices that disavowed the privatization of risks. These alternative risk-managing practices, were, however, almost always racially segregated. Their racially segregated character limited the political potential of this form of risk-making practices as a way to challenge the race/risk nexus and economic subordination. While black insurance cooperatives existed, for example, they often had to 'price in' the 'risk of racism.' As long as insurance schemes remained segregated, white Americans could continue to refuse to share some of the costs associated with the economic risk that was due to the pervasive devaluation of blackness.

Second, in *Proper Distinctions,* I show that race was increasingly used as a proxy for risk in the insurance industry as insurance companies sought to extend their reach to the working classes. By analyzing contemporary insurance journals that reported on the legislative proposals of the Afro-American League, I show how industry representatives justified the use of race as a proxy for risk. For this analysis, I examined relevant articles in prominent insurance journals, such as the *Independent*, the *Chronicle* and the *Weekly Underwriter*, between 1880 and 1890.

In *Distinction and Discrimination,* I analyze how early civil rights activists sought to challenge this use of race as a proxy of risk and illustrate that they invoked the principles of

actuarial justice in trying to challenge the racial practices of the life insurance industry. I show how actuarial justice came to inform the debate about the “color line” in life insurance and explore the ways in which civil rights activists sought to challenge the use of race as a marker of risk. This analysis relies on contemporary reporting in state newspapers in Massachusetts, Michigan, New York, and Ohio and contemporaneous reporting in African American newspapers, such as Fortune’s *New York Age*. For the general contours of the debate, I also consulted state House and Senate Journals and the available annual reports of State insurance commissioners.

In *The Limits of the Civil Rights Vision*, I conclude the chapter by arguing that the way in which Chappelle, Brown, Fortune and Stewart contested the racial practices of the life insurance industry obscured the underlying problem of how to address racial health disparities in for-profit predictive practices.

The Rise of Risk

Today, the principle that everyone is financially responsible for their own risk may seem commonsensical to a U.S. audience. After all, we are constantly asked to submit to risk assessments and are required to take responsibility for the risks that we represent as individuals. Mundane activities such as applying for a loan, job, apartment or car insurance routinely require risk assessments.

However, actuarial justice as an evaluative standard of equity in risk commodification is a relatively recent invention that only gained widespread acceptance in the U.S. during the second half of the 19th century. While the commodification of risk was always closely intertwined with conceptions of equity, these conceptions of equity were initially far removed

from a system in which statistical individuality corresponds to financial responsibility.[3] The earliest instances of risk commodification occurred in the Italian city-states in the late 13th and early 14th centuries.[4] The commodification of risk—i.e., the exchange of money for the assumption of a portion of the risk of a commercial undertaking—developed in response to the uncertainties that beset marine trading, such as the potential loss of a ship which could often spell financial ruin for a merchant.

The concept of risk that developed alongside the first insurance practices, however, was a far cry from a probabilistic understanding of risk based on extensive data on social regularities. Risk was commonly referred to as "periculum" or danger, and defined as the "reasonable expectations" of "reasonable men"—as opposed to the fickle opinions of the hoi polloi—about the likely dangers that a particular commercial undertaking would face.[5] Moreover, the first aleatory contracts were undergirded by a moral economy of risk that delimited legal exchanges of risk to those deemed "equitable." As Lorraine Daston has shown, aleatory contracts were only legal if all parties to the contract had equal expectations of losing and winning. This reflected the broader assumption that aleatory contracts were made for mutual advantage. Today, equiprobability would imply that two participants have the same statistical expectation of winning or losing a given game. An example of this would be a game of dice, in which all participants are randomly assigned a number between 1 and 6, and win if their number turns (assuming the dice is weighted evenly). But a probabilistic understanding of chance had not yet developed, and equiprobability was thought to be present if all parties to an insurance contract were in roughly symmetrical positions in terms

3. I borrow the term "statistical individuality" from Daniel Bouk. See Daniel B. Bouk, *How Our Days Became Numbered: Risk and the Rise of the Statistical Individual* (Chicago: University of Chicago Press, 2015).
4. Piccinno Luisa, "Genoa, 1340–1620: Early Development of Marine Insurance," in *Marine Insurance : Orgins and Institutions, 1300-1850*, ed. A. B. Leonard, Palgrave Studies in the History of Finance Series (London: Palgrave Macmillan, London, 2015), 28.
5. Lorraine Daston, *Classical Probability in the Enlightenment* (Princeton, N.J.: Princeton University Press, 1988), 15ff.

of the information they had about the venture. Given that they had access to the same information, it was thought, they were likely to weigh the chances of any given enterprise similarly. In other words, it was assumed that rational individuals would arrive at the same conclusions regarding the chances of winning or losing, without any of the participants having the upper hand.[6] Initial experiments in marine insurance, therefore, utilized both a concept of risk and an understanding of the social function of risk that was quite distinct from our modern, probabilistic understanding.

It was only in the 18th century that a probabilistic understanding of risk—and reliance on statistical data that made the calculation of risks possible—slowly began to emerge. But as Lorraine Daston has argued, "the shift from qualitative to a quantitative approach to evidence was not a simple one […] It required homogeneous, stable categories composed of identical units: one shipwreck, one death, one fire was like all the others for the statistician. Nothing about the construction of such categories could be taken for granted."[7] Even after a probabilistic understanding of risk had emerged, the transition to actuarial pricing of risks—i.e., pricing risks according to the probability that the insured event would take place—only occurred with the advent of life insurance in the second half of the 18th century. Prior to the emergence of actuarial pricing, marine insurance had relied on underwriting based on the valuation of the goods insured rather than on a quantitative calculation of the likelihood of loss.[8] The first life insurance company that priced risks actuarially, the *Equitable*, was founded in London in 1762.[9] Life insurance soon flourished in England and quickly became "big business" on the British Isles. Elsewhere in Europe, however, the commodification of life risks faced an uphill battle. In most European countries, life insurance remained illegal

6. Ibid.
7. Ibid., 192.
8. Jonathan Levy, *Freaks of Fortune: The Emerging World of Capitalism and Risk in America* (Cambridge, MA: Harvard University Press, 2012), 81.
9. Ibid.

until the end of the 18th century.[10] Life insurance raised a number of complicated and fraught moral and political questions, including questions about the relationship between personal freedom and the monetization of statistical expectations, the impact of the commodification of "life risks" on social and familial bonds, concerns about the equity of actuarially priced risks, and, finally, worries about the new forms of corporate power that insurance companies wielded.

One of the key political issues that concerned contemporaries about the rise of life insurance was a perceived tension between personal freedom and the commodification of "life risks." Critics of the life insurance industry maintained that it was immoral to put a price on a free man's life because "the life of a man is not an object of commerce and it is odious that his death should be an object of mercantile speculation."[11] This was not coincidental, of course. While there had been occasional instances of insuring the life of a free person for the purposes of travel, prior to the boom of life insurance in early 19th century Britain, the lives most commonly insured were those of enslaved persons. As Jon Levy has put it, "before men became the proprietors of 'risks' on their own free selves, they first owned the 'risks' on the bodies of their slaves."[12] Merchants routinely took out insurance on enslaved persons' lives for the duration of the transatlantic passage. In an infamous case in 1781, for example,

---

10. Ibid., 71.
11. I use the gender advisedly. Mortality statistics were only collected for the "average man." Women and all others who were deemed outside of the category "man" found themselves in a kind of "statistical limbo," as Timothy Alborn has put it. After the 1850s, there were increased efforts to develop classifications for other risk groups, but since they were largely irrelevant to the bottom line of early companies, they initially received little actuarial attention. Timothy Alborn, *Regulated Lives: Life Insurance and British Society, 1800–1914* (Toronto: University of Toronto Press, 2009), 9.
12. Levy, *Freaks of Fortune: The Emerging World of Capitalism and Risk in America*, 22. The practice of insuring enslaved persons as commodities generated a set of contradictions, as a number of legal cases adjudicating insurance claims by merchant slave owners show. In 1841, for example, enslaved men on board the *Creole* successfully took control of the ship and "sailed to freedom in the Bahamas." ibid., 23. The underwriters refused to pay out the resulting insurance claims, arguing that a slave revolt did not constitute one of the "perils of the sea." ibid. The commercial risk management regime had to come to terms with the contradiction that arose from the commodification of human beings. How could one account for the revolt of "property"? See also Ian Baucom, *Specters of the Atlantic: Finance Capital, Slavery, and the Philosophy of History* (Durham, NC: Duke University Press, 2005)., Michael Ralph, "'Life… in the Midst of Death': Notes on the Relationship between Slave Insurance, Life Insurance and Disability," *Disability Studies Quarterly* 32, no. 3 (2012).
Levy, *Freaks of Fortune: The Emerging World of Capitalism and Risk in America*, 23.

Liverpool merchants took out insurance in the value of 13,200 pounds for 440 slaves aboard the *Zong.* We know the value of the insurance so precisely because the insurance claim was later the subject of a trial. During a storm, the ship's captain murdered 132 enslaved persons on board by ordering they be thrown overboard. The resulting trial was not a mass murder trial, however, but a dispute between the Liverpool merchants and their underwriters over whether or not the captain's actions were covered under the terms of the insurance contract.[13]

The association between insurance and the most abject commodification of human life must have seemed obvious to contemporaries, and Ian Baucom has argued that the "financializing, decorporealizing logic of equivalence," the "grammar of commensurability," and the "econometric logic of justice" that underwrites the insurance principle and that converts "anything it touches into a monetary equivalent" is perpetually haunted by the "specter of slavery, the slave auction bloc, the slave trader's ledger book."[14] One might reject the implication that the equivalence that life insurance establishes between loss of life and monetary values is somehow inherently connected to or reminiscent of slavery as hyperbolic. But the debate about the permissibility of insurance was, indeed, haunted by "specter of slavery," as Baucom puts it.[15] U.S. debates about the moral and political implications of life insurance played heavily on the registers of slavery and freedom, and the specter of slavery informed the debate about the conditions under which life insurance was compatible with liberal conceptions of self-ownership, and the kinds of life insurance that were permissible, as Jon Levy has argued.[16] For example, Levy has shown convincingly that early life insurance practices in the U.S. were decisively shaped by an abolitionist language that invoked slavery

---

13. *Freaks of Fortune: The Emerging World of Capitalism and Risk in America*. Baucom, *Specters of the Atlantic: Finance Capital, Slavery, and the Philosophy of History*.
14. *Specters of the Atlantic: Finance Capital, Slavery, and the Philosophy of History*, 6,7.
15. For a discussion of the continuities between slave insurance and later forms of life insurance, see also Ralph, "'Life… in the Midst of Death': Notes on the Relationship between Slave Insurance, Life Insurance and Disability." Zenia Kish and Justin Leroy, "Bonded Life: Technologies of Racial Finance from Slave Insurance to Philanthrocapital," *Cultural Studies* 29, no. 5-6 (2015).
16. Levy, *Freaks of Fortune: The Emerging World of Capitalism and Risk in America*, 5.

to combat "speculative" insurance practices. He traces this debate by recounting the campaign against third party assignment of life insurance by abolitionist and actuary Elizur Wright. Third-party assignment was a practice that allowed third parties to buy life insurance contracts that were in danger of defaulting due to the insured's inability to pay the monthly premiums. At the time, the insured did not acquire equity in their life insurance contracts, and failure to pay monthly premiums resulted in the policy being null and void. This made selling the insurance contract attractive. Wright, according to Levy, had witnessed such "third party assignment" in London. He had been both impressed and shaken by it—at least partly due to a perceived similarity between slave auctions and the practice of selling life insurance policies via so-called "insurance auction blocs," where insolvent insurance policyholders sold their life insurance contracts (they were quite literally on the bloc to be inspected as to signs of ill health. Ill health or old age made the insurance contract more valuable to any third party, of course). He remarked that he "had seen slave auctions at home" and "could hardly see more justice in this British practice."[17] Importantly, however, this did not lead him to reject life insurance altogether. When he returned to the United States, he instead directed his energies towards developing what Levy calls an "actuarial science of freedom"—a political theory and practice of risk that would make it compatible with the doctrine of personal freedom and personal responsibility. [18]

But the tensions between the commodification of life risks and conceptions of self-ownership were not the only objections that life insurance faced when it arrived on American shores in the 1830s. Life insurance also raised other, pressing questions about its impact on the fabric of social life, the equity of the new risk management practices, and the new power

17. Elizur Wright, as quoted in ibid., 60.
18. Ibid., 61-103.

of insurance companies to classify distinctive risk populations.

Probabilistic and statistical understanding of risk introduced a vision of social processes as predictable and regular. This was a direct challenge to providential understandings of risk. Many U.S. Americans worried that this constituted a form of human hubris, an infringement on the realm of the divine. They also worried that insurance would fundamentally transform social relationships. Familial relationships were of particular concern: News stories about greedy wives ready to murder their husbands for the insurance money, or homicidal parents prepared to dispose of their offspring to collect the insurance payout, made headlines.[19] So far, scholars have largely focused on these two aspects when analyzing the early history of life insurance in the U.S.[20]

What has received less attention, however, are concerns about the equity about these new risk practices and the new forms of power, namely the power to classify and categorize distinct risk populations, that it entailed. But it is here that we find the emergence of a novel way of thinking about the intersection of race and risk. I will first characterize the concerns about equity and classificatory power in general, and then discuss the ways in which they gave rise to new ways of thinking about the intersection of race and risk in private risk markets.

The rise of statistical information as the basis for making judgments about risk undermined earlier assumptions about the relationship amongst parties to an aleatory contract. There was now a systematic asymmetry between insurance companies and their clients. In distinction to previous moments, where parties to aleatory contracts were at least in theory in a symmetrical position and had (roughly) equal access to information, insurance companies were increasingly able to make use of sophisticated information about statistical

19. Viviana A. Rotman Zelizer, *Morals and Markets: The Development of Life Insurance in the United States* (New York: Columbia University Press, 1979).
20. Ibid.

regularities. In the course of collecting and harnessing this information, insurance companies also developed new classifications that allowed them to predict social regularities, and they developed classifications of distinctive risk populations at their discretion. Early life insurance companies in the U.S., for example, experimented with different classifications of so-called life risks in order to determine what categories were relevant for the prediction of mortality: age, gender, location, place of residence, family history or occupation. Life insurance transformed subjects into objects; individuals were no longer the source of subjective judgments about risks, but were instead themselves regularized and transformed into social regularities and risks. This marks the origin point of what I call "actuarial power."

In the late 19th century, when Massachusetts, Connecticut, Ohio, Rhode Island, New York, New Jersey, Michigan, and Minnesota passed legislation that outlawed discrimination against persons of color by life insurance companies,[21] the life insurance industry was still in the process of grappling with these challenges to its own understanding of equity in risk markets.[22] Life insurance was a relatively recent arrival on American shores and had only begun to make serious inroads into the market and the American social and political imaginary since the 1830s.[23] As the life insurance industry boomed, new forms of risk management were actively contested.

There were two main challenges to what I have called "actuarial power;" i.e., to the private power to assess, classify, and price risks. On the one hand, some opponents of life insurance rejected private insurance and its individualizing actuarial techniques altogether. Such opponents resisted distinctions based on age or occupation and decried such distinctions as inequitable, and as a form of unjust discrimination.[24] But there was also a second response

---

21. Mary L. Heen, "Ending Jim Crow Life Insurance Rates," *Northwestern Journal of Law and Social Policy* 4, no. 2 (2009): 360.
22. Similar legislation was also proposed in Nebraska, but I could not find any evidence that it was passed.
23. J. Owen Stalson, *Marketing Life Insurance: Its History in America* (Cambridge, Mass.: Harvard University Press, 1942). *See also* Zelizer, *Morals and Markets: The Development of Life Insurance in the United States*.
24. Stalson, *Marketing Life Insurance: Its History in America.*

that did not question the principle of private insurance so much as the power of the life insurance companies to develop, classify and categorize distinct risk populations at their discretion and price insurance contracts accordingly.

Fraternal and cooperative life insurance organizations posed the largest challenge to private insurance as such. Fraternal and cooperative life insurance schemes increasingly competed with private, for-profit life insurance companies. Fraternal life insurance first emerged in the 1860s but quickly became a major player in the industry.[25] Between 1880 and 1910, cooperative insurance schemes captured between 40 and 50 percent of the insurance market,[26] which made them "direct competitors of the stock and mutual companies."[27] Fraternal associations explicitly distanced themselves from for-profit insurance companies. Many went so far as to reject the commodification of risk entirely. They argued that the exchange of money for an individual risk went against the fraternal spirit of life insurance. For many, this meant that fraternal, mutualist, and cooperative insurance companies were actively contesting the actuarial model of life insurance, where classification and proportional distribution of the cost of risk governed the relationship between members of the same life insurance industry.[28] Fraternal life insurance offered a sense of solidarity in an age of social alienation and explicitly rejected the individualistic premises of life insurance companies.[29] According to this logic, fraternal or mutual societies were considered clear alternatives to for-profit insurance companies.[30]

One way in which life insurance industries sought to combat the growing influence of fraternal alternatives was the introduction of industrial life insurance. Industrial life insurance

---

25. John Fabian Witt, *The Accidental Republic: Crippled Workingmen, Destitute Widows, and the Remaking of American Law* (Cambridge, Mass.: Harvard University Press, 2004), 71.
26. Stalson, *Marketing Life Insurance: Its History in America*, 532-33.
27. Sharon Murphy, *Investing in Life: Insurance in Antebellum America* (Baltimore: Johns Hopkins University Press, 2010), 295.
28. Cf. Stalson, *Marketing Life Insurance: Its History in America*.
29. Ibid., 451.
30. B. H. Meyer, "Fraternal Beneficiary Societies in the United States," *American Journal of Sociology* 6, no. 5 (1901).

provided life insurance for the “laboring classes.” Payouts were small, but so were the premiums, which enabled many working-class families to insure their lives for the first time. In 1875, Prudential first pioneered industrial life insurance in the U.S., based on the British model of their sister company.[31] In 1879, John Hancock and Metropolitan followed suit. They became known as the “Big Three” in industrial life insurance. Industrial insurance was supposed to prove that there were ways in which for-profit insurance companies could take care of the most vulnerable members of society and stave off claims for the construction of a welfare state. It was an attempt, in other words, to secure and defend a capitalist model of risk commodification against potential threats. Advocates for the life insurance industry explicitly referred to industrial insurance as proof that workers could be integrated into a model of profitable self-provision. In 1885, *The Chronicle*, a weekly insurance journal, for example, portrayed industrial life insurance thus: “[Industrial insurance has] brought within the means of the most humble citizen a protection as sound as that afforded by the policy of any life insurance company in the world, at a price so low that none are too poor to avail themselves to it.”[32]

Ironically, it was precisely the introduction of industrial insurance that brought about the second type of challenge to the life insurance industry—namely, attempts to intervene directly in the ways in which insurance companies made their risks.[33] Black legislators and early civil rights activists began to contest the use of race as a marker of risk in the insurance industry and introduced legislation to establish greater regulatory control over the making and pricing of risks. In distinction to fraternal life insurance, they did not contest the fundamental precepts of actuarial justice but instead challenged the private power of life insurance companies to assess and classify risks without public supervision. They argued that

---

31. Witt, *The Accidental Republic: Crippled Workingmen, Destitute Widows, and the Remaking of American Law*, 74.
32. "The Week," *The Chronicle: A Weekly Insurance Journal*, 11 June 1885, 298.
33. Cf. Levy, *Freaks of Fortune: The Emerging World of Capitalism and Risk in America.*

the public had a legitimate role in supervising and ratifying the classification of groups, rather than leaving the classification and pricing entirely up to life insurance companies.

Proper Distinctions

Initially, the most prominent industrial life insurance companies did not discriminate on the basis of race.[34] Prudential, the leading innovator in the field of industrial insurance, considered both applicants of color and white applicants on the same terms from November 1875 until April 1881.[35] As Wiggins points out, this was due to a lack of experience with insuring African American lives rather than an explicit commitment to racial equality. Prior to the introduction of industrial insurance, the question of African American mortality rates had not come up: very few African Americans had been able to afford so-called "normal" life insurance. With the introduction of industrial life insurance, however, higher African American mortality rates became a problem for life insurance companies for the first time.[36] Life insurance companies began to analyze their own experiences with insuring African American lives and found the differential for which they were looking.[37] In December 1880, Metropolitan decided to decline African American insurance applications.[38] While Prudential did not follow Metropolitan's lead outright, they adopted a differential pricing system based on race in 1881.[39] Metropolitan followed suit and introduced reduced benefits for the same premiums in November 1881.

---

34. Benjamin Alan Wiggins, "Managing Risk, Managing Race: Racialized Actuarial Science in the United States: 1881-1948," (ProQuest Dissertation Publishing: University of Minnesota, 2013), 50.
35. Frederick L Hoffman, *Race Traits and Tendencies of the American Negro* (Clark, N.J.: Lawbook Exchange, 2004 (1896)).
36. "Insurance. The Negro as a Life Risk," *The Independent…Devoted to the Consideration of Politics, Social and Economic Tendencies*, February 10 1898.
37. Wiggins, "Managing Risk, Managing Race: Racialized Actuarial Science in the United States: 1881-1948," 5. Bouk, *How Our Days Became Numbered: Risk and the Rise of the Statistical Individual*, 34.
38. *How Our Days Became Numbered: Risk and the Rise of the Statistical Individual*, 34.
39. Prudential dropped benefits by one-third for African Americans adults and increased premiums for African American infants from three cents per week to five cents per weeks. Wiggins, "Managing Risk, Managing Race: Racialized Actuarial Science in the United States: 1881-1948," 5.

T. McCants Stewart, a black lawyer and civil rights activist, recounted his personal experience with discriminatory insurance rates in an article in the *New York Age*: "[O]ne of the officers of the Equitable Life Insurance Company of New York City, not knowing my color, wrote offering to insure my life. I invited information. He called at my office, and was surprised to find me a colored man. After a pleasant conversation which took a definite business shape, he, with much embarrassment, told me that he could not give me the same rates as a white man. That settled it. I stopped right there."[40] Stewart was not alone in his outrage about the discrimination he suffered at the hands of life insurance companies. In 1884, Julius Chapelle, the sole black representative in the Massachusetts State House, introduced a bill "against the discrimination of persons of color by life insurance companies."[41] Eventually, a number of states followed Massachusetts' lead. Connecticut passed a copy of the Massachusetts bill in 1887, Rhode Island and Ohio passed anti-discrimination bills in 1888[42] and 1889, New York in 1891, Michigan in 1893, New Jersey in 1894 and Minnesota in 1895.[43] A similar bill was introduced in Nebraska by Rep. Matthew Oliver Rickets, but seems not to have passed.[44]

However, where Stewart and others had seen discriminatory treatment, life insurance companies and their supporters insisted that they were merely making a "proper distinction."[45] In 1887, for example, the insurance commissioner of Massachusetts, John K.

---

40. T. McCants Stewart, "Counsel to the State League," *The New York Age*, 14 June 1890.
41. Heen, "Ending Jim Crow Life Insurance Rates," 360.
42. Rhode Island repealed the law in 1906. Ibid., n126.
43. Wiggins, "Managing Risk, Managing Race: Racialized Actuarial Science in the United States: 1881-1948," 140 n1.
44. Rep. Ricketts introduced H.R. 465 on February 23, 1893. "A Host of New Bills," *Lincoln Semi-Weekly State Journal*, February 28 1893. The bill was sent to the committee on insurance, which sent the bill back to the House with the recommendation that it be passed. Nebraska, *House Journal of the Legislature of the State of Nebraska,* 23rd Session, (1893). But there is no record that the bill was passed by the house. The bill was not reintroduced in 1895 and also does not appear in Nebraska, Guy A. Brown, and Hiland H. Wheeler, *The Compiled Statutes of the State of Nebraska, 1881: With Amendments 1882 to 1897, Comprising All Laws of a General Nature in Force July 10, 1897*, 8th ed. (Lincoln: State Journal Co., 1897).
45. Commonwealth of Massachusetts, Insurance Department, "Report of the Insurance Commissioner on the Resolve to Revise and Codify the Insurance Laws of the Commonwealth (Chap. 83, Resolves of 1886)," H. 108—20, 1-57, 1st Sess., (1887).

Tarbox, argued that the 1884 Massachusetts law "against discrimination of persons of color in life insurance" missed its intended target. "Were the effects of the statute what its title imports," Tarbox maintained, "it would be unexceptionable. But the title is a misnomer. Under the guise of an attempt to prevent an odious discrimination, the law forbids a proper distinction. It compels insurance to companies to insure the lives 'of colored persons wholly or partially of African descent' upon the same terms it insures the lives 'of white persons'. This would be right if the average longevity of the races were the same. But […] the fact seems well established that the average longevity of the colored population is considerably less than that of the white population in the United States. The science and safety of life insurance rest upon a safe estimate of the probable average duration of the lives of the insured[46] […]." Most insurance journals agreed with Insurance Commissioner Tarbox and argued that the law could not be regarded as "discrimination in the obnoxious sense" because it was not "against color" and therefore "not […] in any real sense a discrimination."[47] Instead, differential pricing on the basis of race merely reflected the "logic of the facts of experience"[48] and the "indisputable fact that the death rate among the colored people was greater than among the whites."[49]

'Discrimination against color' was thus construed very narrowly as unequal treatment given identical risk characteristics. As one writer put it: "If any discrimination has been made or is likely to be made, we may be sure it is because the companies discern a difference in the nature of the risk *due to the color*. Assuredly they would never say to the black, 'We count you an equal risk with the white but because of your color we charge you extra.'[50]

---

46. Ibid., xiv. For a similar commentary by Tarbox in an earlier insurance report, see "The Color Line in Insurance," *The Weekly Underwriter: An Insurance Newspaper*, July 19 1884.
47. "The Negro as an Industrial Risk," *The Independent…Devoted to the Consideration of Politics, Social and Economic Tendencies* 1902.
48. "Insurance: Color in Life Insurance," *The Independent…Devoted to the Consideration of Politics, Social and Economic Tendencies*, May 17 1900.
49. "On Beacon Hill: Life Insurance Companies' Distinctions against the Negro," *Boston Daily Advertiser*, April 25 1884.
50. "An Objectionable Law," *The Independent…Devoted to the Consideration of Politics, Social and Economic*

Consequently, discrimination came to mean unequal treatment that is *solely* attributable to a dislike or devaluation of color and creates a new distinction rather than recognizing an existing distinction. Recognizing and acting according to existing inequalities that are distributed along lines of race, on the other hand, did not constitute discrimination, but had to be understood as a 'proper distinction'. Many opponents of the anti-discrimination legislation sought to portray this as the realization of 'equality of opportunity.' 'Equality of opportunity', in their conceptualization, required nothing more than that corporations and state institutions did not introduce distinctions where equality of conditions prevailed. However, it did not require—in fact, it forbade—addressing existing racial inequalities.

Private actors could not be held responsible for existing inequalities, opponents of anti-discrimination legislation argued, and the state could not legitimately force them to assume a role in the amelioration of such inequalities. Three arguments were commonly advanced to argue that holding private actors co-responsible for the amelioration of inequality was morally impermissible. First, commentators argued that it violated property rights. Property rights, so the argument went, were sacrosanct, and nobody could be forced to use their property in a way they did not choose. Insurance capital, it was argued, was private property and the obligation to insure any particular class of policyholders would, therefore, constitute a violation of property rights. Second, opponents of anti-discrimination legislation argued that state interference in this matter was impermissible because it undermined the provision or maximization of a good. Insurance companies, it was argued, produced a crucial good: they provided each individual with the ability to protect themselves against life's inherent risks. Any attempt to meddle with or intervene in the making of risks would inevitably lead to a decline in the profitability of the insurance industry, and hence to a

Tendencies, July 2 1891.

decline in the provision of the general welfare.[51] Finally, opponents argued that intervening in the making of risks was impermissible because it contravened natural laws. The state, they argued, set and enforced conditions that allowed natural regularities to be reflected and worked out via the market. Racial differences, it was implied, constituted such differences, and the state, therefore, had to respect them. Hence, the market had to *reflect* existing inequalities; it could not be used to remedy them.

With regard to risk, this meant that the art of making proper distinctions was the art of approximating categories that reflected *natural*, *pre-given* regularities. We can call this a 'naturalist' conception of risk that sees categories and practices through which we 'capture' risk as *functional approximations* of underlying regularities.[52] Any tampering with such categories (i.e., categories that had been established as functional approximations) commentators asserted, would threaten to enforce equality where it did not belong.

This view was embedded in a broader conception of the role of the market in facilitating and revealing naturally given social hierarchies. The market, in other words, was

---

51. These arguments were not mutually exclusive and were often employed in tandem. For a similar discussion of the relationship between older conceptions of natural law and the inalienable rights of man as rights that should not be violated because it was morally impermissible and modern conceptions of natural laws as immutable regularities that should not be violated because it is futile to do so, see Nancy Cohen, *The Reconstruction of American Liberalism, 1865-1914* (Chapel Hill: University of North Carolina Press, 2002), 39ff.

52. I would distinguish a naturalist understanding of risk from constructivist conceptions of risk. Constructivist conceptions of risk differ from naturalist understandings of risk in two ways: First, it sees the social practices that establish the underlying regularities that allow us to measure risk as contingent and fluctuating. Therefore, they need to be "conceptually visible"—i.e., one needs an analysis of the practices that constitute underlying regularities in order to understand the appropriateness of the construction and circulation of financial risk measures (such as, for example, credit scores or assessments made by bond rating agencies). Second, the relation between underlying social regularities and risk measures is not simply one of reflection. Instead, the way in which is objectified through epistemic and institutional practices is *productive*. Here, I would distinguish between a moderate constructivist conception of risk according to which we have a number of different epistemic tools at our disposal that help us (or fail to do so) to assess risks, i.e., contingent regularities of social action. According to this conception, a divergence between the contingent regularities of social action and the objectification of risk can lead to the generation of systemic instability. Risk practices or risk epistemes can thus be productive insofar as they are inadequate reflections of contingent underlying regularities. A radical constructivist conception of risk, by contrast, argues that the ways in which we conceive of risk and the practices through which we "objectify" it are themselves constitutive of the underlying regularities (although this constitutive logic need not be one of self-realization—i.e., it is not simply the case that "ideal" conceptions of risk produce their "material" mirror images.) One could also call this a performative theory of risk.

understood as a mechanism that could reveal the inherent, naturally given social order.[53] It was to be a "site of veridiction" that would reveal the ontology of race; i.e., it would reveal whether African Americans were truly equal.[54] This conception of the market meant that opponents of anti-discrimination legislation did not necessarily have to subscribe to an ideology of biological racism. Of course, there were many opponents of anti-discrimination legislation who subscribed to biological racism and regarded racial difference, including differences in mortality rates, as biological and immutable. Frederick L. Hoffman, one of Prudential's actuaries, for example, asserted that racial differences in mortality rates were attributable to an "inherent racial degenerative trait," which would eventually lead to the "extinction of the race."[55] Similarly, an anonymous insurance journalist in *The Independent* argued that mortality rates would either persist or worsen, given "low vitality and inherited weakness of constitution." But notions of innate biological differences were not, by any means, the only explanations for racial differences in mortality rates that circulated in insurance circles. Some commentators were aware that differences in mortality rates could also be explained by environmental factors. One writer in *The Independent*, for example, argued that the racial differences in mortality statistics were "an unhappy condition, but not necessarily a hopeless or discouraging one." The author maintained that racial differences in mortality rates would eventually disappear, because "the evolution of the long depressed and down-trodden race is slow and must be slow, but it is none the less sure."[56]

---

53. Cf. Sandra Peart and David M. Levy, *The "Vanity of the Philosopher": From Equality to Hierarchy in Postclassical Economics* (Ann Arbor: University of Michigan Press, 2005).
54. Cf. Michel Foucault, *The Birth of Biopolitics Lectures at the College De France, 1978-79*, ed. Michel Senellart and Graham Burchell (Houndmills, Basingstoke: Palgrave Macmillan, 2008), 32.
55. Hoffman, *Race Traits and Tendencies of the American Negro*. In fact, a number of advocates of the life insurance industry subscribed to the emerging "race death" thesis, which portrayed emancipation as the beginning of the end for freedmen and maintained that African Americans were unfit to survive and thrive in a modern world. Enslaved Africans, so the argument went, had been "protected from the new environment," which had allowed them "to flourish." After emancipation, advocates of the race death thesis suggested, African Americans were bound to "disappear." Cf. Frederick Starr, "The Degeneracy of the American Negro," *The Dial, a Semi-monthly Journal of Literary Criticism, Discussion and Information*, January 1 1897.
56. "Insurance: The Negro as a Life Risk", *The Independent… Devoted to the Consideration of Politics, Social and Economic Tendencies*, February, 10 1898.

In both cases, however, the idea was that questions about the origins and ontological status of differential racial mortality rates were going to be answered by and through market mechanisms themselves. The market would act as a facilitator, a mechanism that allowed for the competition not merely of individuals but of racial groups also. But this competition was not conceptualized as a race in which everybody had the same starting point. Instead, it was seen as a form of civilizational catch-up; the results of which would establish whether there was any inherent equality between racial groups or whether racial groups were to be hierarchically ordered. In other words, a history of injustice—of enslavement and brutal exploitation—was transmuted into the natural starting point for a civilizational contest that would take place in a putatively free market. There was a common rejection of collective responsibility for mortality differences, even as a consensus on the origins of racial differences in mortality remained elusive. Irrespective of what commentators believed about the origins of racial differences in mortality rates, they shared the idea that African Americans were financially responsible for the cost of these higher mortality rates. The best African Americans could hope for, in other words, was to catch up—to overcome both the historical legacy of slavery, exploitation, and exclusion—in order to prove, in overcoming this history, their own equality. Economic success was to be a sign of equality, the market a site of veridiction. Of course, this meant that the United States, as a political body, eschewed any responsibility for corrective justice—both for remedying the injustice of the past and for providing anything resembling an equal starting point. Henceforth, the responsibility for remedying an unjust past was to be a problem for African Americans, and the cost of a history of enslavement, dehumanization, and exploitation was to be borne by the victims of that injustice.

This did not simply take the form of a *rejection* of a claim of corrective justice.

Instead, the notion that each individual had to take responsibility for 'their' risk was itself presented as a requirement of justice. The opponents of anti-discrimination legislation often portrayed themselves as hard-headed businessmen, willing to recognize the harsh realities of the world and to eschew simple-minded sentimentalities. In Massachusetts, for example, Representative Williams, the chairman of the insurance committee and one of the principal opponents of Representative Chapelle's anti-discrimination bill, maintained that while the "insurance committee would do anything to prevent discrimination on grounds of color, this was a matter of business." "If the bill would right the wrong to anyone, he would heartily support it," he argued, but argued that it was instead "framed to meet the wishes of those who were oversensitive and delicate upon the matter."[57] Senator Thomas concurred that "this was not a question of sentiment, but of business." He claimed that it was "an indisputable fact that the death rate among the colored people [is] greater than among the whites. Whatever the cause of this, it was not in the power of the legislature to change this fact, and no business ought to be endangered by sentiment."[58]

For all their appeals to hard-headed 'business reason,' however, the opponents of the anti-discrimination legislation insisted that "proper distinctions" were a requirement of justice. John Tarbox, the Massachusetts insurance commissioner, for example, claimed that "if […] a class of persons of inferior vitality are mutually insured on the same terms with, and upon a basis calculated from the probabilities of life of, a class of persons of superior vitality, injustice is done the latter class, who are made to bear a disproportionate part of the common burden of insurance […]."[59] Tarbox and other opponents of the law frequently invoked the idea that an equitable and fair distribution of the financial costs of risk had to reflect the distribution of risk in the population—everyone had to bear financial responsibility

57. "On Beacon Hill: Life Insurance Companies' Distinctions against the Negro."
58. "The Legislature: No Discrimination against Colored People," *Boston Daily Advertiser*, April 25 1884.
59. Ibid.

for their *proper*, their *own* risk. According to opponents of the anti-discrimination legislation, it was the only way to ensure an equitable distribution of the financial responsibility for risk. As one commentator in *The Independent* put it, "[a]ll this is a way of saying that the insured must pay for *their own* [my emphasis] insurance".[60]

Distinction and Discrimination

How did anti-discrimination activists make the case that differential premiums did not constitute a proper distinction, but were instead an example of illegitimate and unjust discrimination? Our contemporary familiarity makes the anti-discrimination case seem straightforward—a step in the right direction in history, even as it is tragically thwarted. In the following, however, I will take a second look at the way in which African American legislators and leading political thinkers conceptualized and contested discrimination. I argue that African American civil rights activists challenged the private power of insurance companies to define, make, and price so-called life-risks. They insisted that the state had the right to oversee the rationality and appropriateness of actuarial categories in order to ensure racial equality. This, I maintain, constituted a crucial, but partial, politicization of the practices of risk-making. In fact, it set a precedent for the politicization of certain economic practices by articulating principles for the evaluation of state interventions into social and economic life according to criteria of racial justice. However, while civil rights activists did politicize risk-making, this politicization remained limited. Civil rights discourse challenged the private power of insurance companies to aggregate and segregate risks according to racial criteria at their discretion, but it did not challenge the principle of actuarial justice as an evaluative standard for the distribution of the financial burdens of risk. The idea that

60. "Insurance: A Statutory Curiosity," *The Independent…Devoted to the Consideration of Politics, Social and Economic Tendencies*, July 24 1884.

everyone had to pay for the risk they represented remained unquestioned and unchallenged. In a society that was deeply marked by the legacy of racial slavery, this could not successfully resolve the racialized distribution of the financial cost of risks that were the product of a history of injustice.

The fight against discriminatory practices in life insurance markets was embedded in broader civil rights struggles that raised complex questions about the boundary between the private and the public and the extent and nature of legitimate state intervention into the economy. While the tenuous gains of Reconstruction were rapidly being reversed in the South, black Americans in the North were fighting to preserve and expand civil rights gains.[61] The passage of the 1866 Civil Rights Act, the Reconstruction Amendments and the 1875 Civil Rights Act had secured civil rights and political rights for African Americans, including rights of property and security, the right to vote and run for office, and the right to "equal enjoyment" of public places of enjoyment (such as theaters), means of transportation and inns.[62] In the wake of the 1883 Civil Rights Cases, in which the Supreme Court declared the 1875 civil rights act unconstitutional, African Americans in many Northern states pushed for legislation that would (re-)establish or strengthen rights to equal enjoyment of public accommodations in state law. New York, for example, had already passed a civil rights state law in 1873, establishing "equal enjoyment of accommodations or facilities provided by inn-

---

61. Today, civil rights are commonly understood as the "rights that constitute free and equal citizenship in a liberal democracy" and include not only rights such as property rights, due process and religious freedom, but also political and welfare rights and/or rights of cultural membership. See Andrew Altman, "Civil Rights," ed. Edward N. Zalta, *Stanford Encyclopedia of Philosophy* (2017), https://plato.stanford.edu/archives/win2017/entries/civil-rights. However, at the close of the 19th century, civil rights had a narrower meaning. The 1866 Civil Rights Act, for example, defined civil rights as "those [rights] which have no relation to the establishment, support, or management of government." *Congressional Globe*, House of Representatives, 39th Congress, 1st Session, p. 1117 (March 1, 1866). The 1875 Civil Rights Act took a broader view of civil rights and included the right of equal enjoyment of places of public accommodation. Distinguishing civil from political and social rights, however, remained common throughout the late 19th century. Cf. Mark Golub, *Is Racial Equality Unconstitutional?* (New York, NY: Oxford University Press, 2018), 67.
62. Cf. George Rutherglen, *Civil Rights in the Shadow of Slavery: The Constitution, Common Law, and the Civil Rights Act of 1866* (Oxford U.K.; New York: Oxford University Press, 2013).

keepers, common carriers, theaters or common schools and public educational institutions"[63] and enlarged the scope of the law in 1893 and 1895.[64]

The debate about discrimination against persons of color by life insurance companies took place in this context. Proponents of the 'bill to prevent discrimination of persons of color by life insurance companies' called the legislation a "civil rights bill" and defended it on analogous terms as legislation that aimed to secure full and equal enjoyment of public accommodations.[65] In New York, the Afro-American League was one of the strongest advocates for the passage of the bill "To Prevent Discrimination Against Persons of Color by Life Insurance Companies." The Afro-American League was an early, and relatively short-lived, civil rights organization. T. Thomas Fortune, a prominent journalist, first called for a 'Protective League' in 1887, but it would take until 1890 for it to become a reality. Its dissolution was announced shortly thereafter, a mere three years after its founding, in 1983. Nonetheless, the League was influential in supporting the passage of a number of civil rights bills.[66] In addition to challenging discrimination in insurance, the League also opposed efforts to segregate schools in Ohio, and separate coach laws in Tennessee. It has been credited with "play[ing] an important historical role in the transmission of ideas to later groups including the Afro-American Council, the Niagara Movement […]" and the NAACP. [67]As Shawn Leigh Alexander has put it, "the Afro-American League presents an important chapter in African American social and political thought. In a period increasingly dominated by the

---

63. New York Laws of 1873, Chapter 186, Section 1 as cited in David McBride, "Fourteenth Amendment Idealism: The New York State Civil Rights Law, 1873–1918," *New York History* 71, no. 2 (1990): 207.
64. Ibid., 219. The 1895 amendment extended the list of property the use of which had to be governed by Civil Rights law to "full and equal accommodations, advantages, facilities and privileges of inns, restaurants, hotels, eating houses, bath-houses, barber-shops, theatres, music halls, public conveyances on land and water, and all other places of public accommodation or amusement, subject only to the conditions established by law and applicable alike to all citizens." New York Laws of 1895, chap. 1042, sees. 1 and 2.
65. Stewart, "Counsel to the State League."
66. T. Thomas Fortune, ed. *T. Thomas Fortune, the Afro-American Agitator : A Collection of Writings, 1880-1928*, New Perspectives on the History of the South (Gainesville: University Press of Florida, 2008).
67. Susan D. Carle, "Debunking the Myth of Civil Rights Liberalism: Visions of Racial Justice in the Thought of T. Thomas Fortune, 1880-1890," *Fordham Law Review* 77, no. 4 (2008): 1482.

ideas of industrial education and accommodations, the League […] represented the persistence of a protest tradition."[68]

There were two leading members of the Afro-American League who were particularly vocal in their support of the anti-discrimination insurance bill: Thomas T. Fortune and T. McCants Stewart. Today, the names and lives of T. Thomas Fortune and T. McCants Stewart are not particularly well known.[69] In the late 19th century, however, both were well-known figures and widely considered leading "race men".

Thomas T. Fortune was born in Marianna, Florida, in 1856.[70] Marianna, according to Fortune, was a place so "insignificant," "it can hardly be located on the map of the United States."[71] At the time of his birth, Fortune's parents were enslaved.[72] During Reconstruction, Fortune's father represented Jackson County at the Florida Constitutional Convention and served in the legislature. His political activity made him and his family a target of the local Ku-Klux-Klan.[73] In his autobiographical writings, Fortune recalled the terror of this time: "There is no condition one can live in which strains the nerves and confuses thought more than a lawless one; a condition in which a person knows that his life is at the mercy of any assassin who can catch him off his guard" and where "none [can] call his life his own, and fear and demoralization dominated the lives of all men."[74] After Fortune's father received death threats from Regulators[75]—backed up by sharpshooters around the house at night—his

68. Fortune, *T. Thomas Fortune, the Afro-American Agitator : A Collection of Writings, 1880-1928*, xxiv.
69. Thomas McCants Stewart's son, who rose to some prominence as a civil rights lawyer, was also called McCants Stewart. I am here discussing *Thomas* McCants Stewart (1953-1923), rather than his son (1877-1919).
70. Fortune, *T. Thomas Fortune, the Afro-American Agitator : A Collection of Writings, 1880-1928*.
71.*After War Times : An African American Childhood in Reconstruction-Era Florida* (Tuscaloosa, Alabama: The University of Alabama Press, 2014), 1.
72. *T. Thomas Fortune, the Afro-American Agitator : A Collection of Writings, 1880-1928*, xii.For an introduction to Fortune's life, see Emma Lou Thornbrough, *T.Thomas Fortune: Militan Journalist* (Chicago: University of Chicago Press, 1972).
73. Fortune, *T. Thomas Fortune, the Afro-American Agitator : A Collection of Writings, 1880-1928*, xii. See also *After War Times : An African American Childhood in Reconstruction-Era Florida*.
74. Thomas T. Fortune, *Norfolk Journal and Guide*, October 1, 1927 and September 3 1927 as quoted in *T. Thomas Fortune, the Afro-American Agitator : A Collection of Writings, 1880-1928*, xii.
75. Jackson County's "Regulators" were a white, paramilitary terror organization, similar to the Ku-Klux-Klan. *After War Times : An African American Childhood in Reconstruction-Era Florida*, 84 n26ff.

family moved to Jacksonville to escape the violence in 1869.[76]

Fortune became interested in journalism early on and worked for a number of local black newspapers in his youth. In the late 1870s, Fortune relocated to New York City, where he founded the *New York Globe* in 1881 (later known as the *New York Freeman* and the *New York Age*).[77] Between 1883 and 1885, a teenaged Du Bois wrote some of his first journalistic pieces for the *New York Globe*. The *New York Globe* quickly became one of the most influential African American newspapers,[78] and Fortune made a name for himself as a radical, a "militant journalist."[79] His newspaper took an "uncompromising position on civil rights."[80] Fortune denounced the Republican Party's Reconstruction policy in no uncertain terms, calling it "revolting peculation and crime" and a form of "base ingratitude, subterfuge and hypocrisy to its black partisan allies."[81] In countless editorials, Fortune condemned the rollback of the gains of Reconstruction, arguing that continuous, militant protest—up to and including violence—was necessary to halt the progressive undermining of black citizenship. As he put it in his first call for a civil rights organization, in 1884: "Let us agitate! agitate! AGITATE! Until the protest shall wake the nation from its indifference." [82]

Fortune not only endorsed a militant civil rights agenda throughout much of his life

---

76. Ibid., 32-33.
77. Fortune, *T. Thomas Fortune, the Afro-American Agitator : A Collection of Writings, 1880-1928*, xxxix. Technically, the *New York Globe* failed in 1884. Thomas T. Fortune then started a new newspaper, the *New York Freeman*. The financial fortunes of the *New York Freeman* were also less than secure—not least because Fortune refused to toe the Republican Party line. Fortune argued that the Republican Party had come to take the black vote for granted, and that it was therefore necessary to either take an independent position, or to align oneself with the Democratic Party in order to rekindle a competition for the black vote. While Fortune's experiments with alliances with the Democratic Party did not bear political fruit, his independent political voice made it more difficult for him to secure funding for his newspaper. After ten years as the *New York Globe's/New York Freeman's* editor, Fortune stepped down and handed the newspaper over to his brother. It was renamed '*New York Age*.' In 1889, after his brother's death, Fortune assumed the editorship of the *New York Age* again, and served as editor until 1907, when Booker T. Washington assumed complete control over the newspaper.
78. I. Garland Penn, *The Afro-American Press and Its Editors*, American Negro, His History and Literature (New York: Arno Press, 1969 (1891)).
79. Thornbrough, *T.Thomas Fortune: Militan Journalist*.
80. Fortune, *T. Thomas Fortune, the Afro-American Agitator : A Collection of Writings, 1880-1928*, xiv.
81. As quoted in August Meier, *Negro Thought in America, 1880-1915: Racial Ideologies in the Age of Booker T. Washington* (Ann Arbor: The University of Michigan Press, 1963), 31.
82. Fortune, *T. Thomas Fortune, the Afro-American Agitator : A Collection of Writings, 1880-1928*, xviii.

(except during his most dire “moments of discouragement,” during which he sometimes counseled economic self-help, as August Meier puts it) but also endorsed a radical economic doctrine of extensive land redistribution and class struggle during a time when most black leaders endorsed a conservative economic agenda of thrift and industry as a prerequisite for black citizenship. [83] He sympathized with radical agrarian and labor movements, such as the Colored Farmers' Alliance and the Knights of Labor.[84] Fortune's most in-depth articulation of his radical economic agenda is *Black and White: Land, Labor and Politics in the South,* published in 1884. In *Black and White*, Fortune, influenced by Henry George, puts the land question front and center: He argues that the monopoly of land leads to inequality, tyranny over labor, and the corruption of republican institutions. And while Fortune was particularly critical of concentrated land ownership, he went further and critiqued individual property in land as such: “Land is, in its very nature, the common property of the people. Like air and water, it is one of the natural elements which inhere in man as a common right, and without which life could in no wise be sustained.”[85] Individual ownership in land, he maintains, “is a transgression of the common right of man, and a usurpation which produces nearly, if not all, the evils which result upon our civilization; the inequalities which produce pauperism, vice, crime, and wide-spread demoralization among all the so-called ‘lower classes;’ which produce, side by side, the millionaire and the tramp, the brownstone front and the hut of the squatter, the wide extending acres of the bonanza farm and the small holding, the lord of the manor and the cringing serf, peasant and slave.”[86] In the mid-1880s, Fortune still believed that only an interracial coalition of agrarian and industrial labor could overturn the “tyranny

---

83. Fortune's conception of the political economy of race will be addressed in more detail later in the chapter.
84. Meier, *Negro Thought in America, 1880-1915: Racial Ideologies in the Age of Booker T. Washington*, x. See also Tameka Bradley Hobbs, "Epilogue," in *After War Times : An African American Childhood in Reconstruction-Era Florida*, ed. Daniel R. Weinfeld (Tuscaloosa, Alabama: The University of Alabama Press, 2014), 61.
85. T. Thomas Fortune, Black and White: Land, Labor and Politics in the South, (Project Gutenberg, 2005 (1884)), http://www.gutenberg.org/ebooks/16810. Kindle. loc. 2079-80.
86. Ibid., loc. 2086-90.

of capital," the domination by "presumptuous wealth accumulated by robbery, hypocrisy and insidious assassination."[87]

His faith in such an alliance was deeply shaken by the end of the decade, however, and he became increasingly pessimistic that a progressive alliance of African Americans and white farmers and laborers could ever be realized.[88] In the 1890s, Fortune developed a close relationship with Booker T. Washington. Fortune worked closely with Washington during his time as chairman of the Afro-American National Council, the successor organization of the Afro-American League, and supported the founding of Washington's National Negro Business League in 1900. Despite their very different political outlooks, Fortune and Washington would remain close associates until 1907. Fortune would later maintain that Washington and he "had a working understanding that I should pursue the radical course I had always pursued and he would pursue the course of diplomacy he had mapped out for himself."[89] Others perceived the relationship in a different light. In a 1907 editorial, Du Bois, who had admired the young Fortune,[90] described him as a "fallen" writer, "grovell[ing] in the dust" before Booker T. Washington.[91] Later historians have hardly been kinder: David Levering Lewis, for example, has called Fortune "a faithful servant of Tuskegee" and "Washington's minister of information."[92] While this might be too harsh an assessment, it is certainly true that Fortune became increasingly dependent on Washington financially. In 1907, political, as well as personal, conflicts came to a head, and Washington assumed control over Fortune's newspaper. Fortune suffered a nervous breakdown from which he never fully recovered. While Fortune continued to write prolifically for a number of black

87. Ibid., loc. 1670, loc. 100.
88. Meier, *Negro Thought in America, 1880-1915: Racial Ideologies in the Age of Booker T. Washington*, 47.
89. Fortune, *T. Thomas Fortune, the Afro-American Agitator : A Collection of Writings, 1880-1928*, 196.
90. David L. Lewis, *W.E.B. Dubois: Biography of a Race, 1869-1919*, 1st ed. (New York: Owl Books, Henry Holt and Company LLC, 1993), 38.
91. Ibid., 339.
92. Ibid., 299.

newspapers, as well as making several attempts to found another independent newspaper, he lost much of his influence. Towards the end of his life, he briefly became involved in Garvey's UNIA and served as editor of the journal *Negro World*.

Stewart McCants, who was Fortune's senior by three years, was born in South Carolina in 1853 into an upper-class black family.[93] After attending Howard and the University of South Carolina in the 1870s and earning a law degree from the University of South Carolina in 1875, he briefly practiced law there.[94] He later attended the Princeton Theological Seminary and, in 1880, accepted a post as the minister for the Bethel African Methodist Episcopal Church in Brooklyn.[95] It was there that he first met T. Thomas Fortune. According to Robert Swan, they developed a "life-long and symbiotic relationship."[96] During his time as a minister, Stewart was active in state and local politics, convening meetings to protest separate coach laws in the South, critiquing racism in the New York judicial system, and arguing for a more independent stance of the black electorate vis-a-vis the Republican Party. Stewart also became deeply interested in Christian missionary work in Africa. In 1883, Edward W. Blyden invited him to teach at Liberia College, and Stewart followed the invitation and emigrated to Liberia in 1883. While Stewart was clearly motivated by a belief that he was fulfilling "God's purpose in Africa," he also saw Liberia as a "refuge from oppression."[97] Ultimately, however, he did not remain in Liberia long. Tensions between him and Blyden developed almost immediately. Stewart was also deeply disappointed by the state

---

93. Albert S. Broussard, *African-American Odyssey: The Stewarts, 1853-1963* (Lawrence: University Press of Kansas, 1998), 16; Robert Joseph Swan, "Thomas McCants Stewart and the Failure of the Mission of the Talented Tenth in Black America, 1880-1923," (ProQuest Dissertation Publishing: New York University, 1990), 5. As Swan points out, different sources indicate different birth dates, ranging from 1853 to 1855. Ibid., 4.
94. Swan, "Thomas McCants and the Failure of the Talented Tenth," 5.
95. Charles E. Wynes, "T. McCants Stewart: Peripatetic Black South Carolinian," *The South Carolina Historical Magazine* 80, no. 4 (1979): 312.
96. Swan, "Thomas McCants and the Failure of the Talented Tenth," 56.
97. *Globe*, Sept 1, 1883, p. 24 as quoted in ibid., 79. See also Michele Mitchell, *Righteous Propagation: African Americans and the Politics of Racial Destiny after Reconstruction* (Chapel Hill: University of North Carolina Press, 2004), 16-50.

of Liberia College, which he called a “feeble affair, unworthy of the name.”[98] In 1885, he returned to New York to resume his law practice.[99] He litigated a number of civil rights cases, including a suit brought by T. Thomas Fortune against the Trainor Hotel that had refused Fortune service and forcibly ejected him.[100] During his time in New York, Stewart was also prominently involved in the struggle against segregating New York schools. He drafted a number of civil rights laws, and was an early supporter of the Afro-American League.[101] The first two civil rights bills that he drafted—in 1887 and 1889—failed. A third attempt, the so-called Malby law, was passed in 1895 but remained a dead letter.[102] According to Swan, Stewart grew increasingly hopeless about the possibility of realizing equal citizenship for African Americans. “By 1898”, he argues, “Stewart became convinced that whites would not grant blacks their civil and political rights.” Stewart counseled his son to seek freedom from the encroaching color line in the Western States, and, in the same year, moved to Hawaii. He left again, a mere 7 years later, in 1905, for London, and, just a year later, moved back to Liberia.[103] He became a Liberian citizen and was appointed to the Liberian Supreme Court, only to be removed again in 1911. Disillusioned with Liberian politics, Stewart spent the next seven years in London, from 1914 to 1921. In 1921, he relocated to St. Thomas, Virgin Islands, where he died in 1923.

Both Fortune and Stewart were prominent advocates advocating for the New York anti-discrimination bill. Stewart, who had written an earlier and broader civil rights bill that had failed to pass,[104] came out publicly in support of the legislation in the New York Age.[105] Given his involvement with the initial civil rights bill, it is not implausible to assume that

---

98. As quoted in Broussard, *African-American Odyssey: The Stewarts, 1853-1963*, 49.
99. Ibid., 44ff.
100. Swan, "Thomas McCants and the Failure of the Talented Tenth," 153.
101. Ibid., 162, 46, 47.
102. Ibid., 237.
103. Broussard, *African-American Odyssey: The Stewarts, 1853-1963*.
104. Swan, "Thomas McCants and the Failure of the Talented Tenth," 149.
105. Stewart, "Counsel to the State League."; "Insurance Bill Signed," *The New York Age*, April 11 1891.

Stewart was also involved in writing the New York anti-discrimination legislation. Stewart defended the anti-discrimination bill on analogous terms as legislation that aimed to secure equal and full enjoyment of public accommodations:

> "We need an insurance law such as they have in the State of Ohio to prevent the unjust discrimination to which insurance companies subject their patrons on account of race and color. I am glad that the Afro-American League of Albany has already moved in the matter, and I hope that the next legislature will resist the influence of these corporations and pass a remedial law. Again, public places are licensed for the accommodation of the public. Afro-Americans are a part of the public. A refusal to serve them is in violation of the common law of the land and there should be passed a Civil Rights Act with punitive provisions for those who violate the common law. Social matters will regulate themselves. In the enjoyment of public rights there should be no discrimination on account of color; and the law should be that separation, whether in public schools, or inns, or conveyances, or elsewhere, is discrimination."[106]

Insurance, this argument implied, like theaters, inns, or means of transportation, had a public or quasi-public character and therefore ought to accommodate African Americans on the same terms as whites. Contrary to the claims of life insurance companies, Stewart argued that risk making was *not* a purely private undertaking. Instead of delegating the power to classify and price risks exclusively to the actuaries and managers of life insurance companies, Stewart and others argued that life insurance was a public good that the state could legitimately regulate. This had three implications: first, a public debate about actuarial categories contested actuarial power. It challenged the rationality of risk-making and risk-pricing, disputed the private power of insurance companies to make and assess risks without state oversight, and demanded that public power be granted a role in assessing and ratifying the

106. "Counsel to the State League." See also, "The Civil Rights Measure," ibid., April 26. The opponents of the legislation likewise took up the argument that insurance, like theaters or inns, should be subject to the requirement of equal enjoyment regardless of color, race or previous conditions of servitude. An anonymous author in the *Weekly Underwriter*, for example, wrote: "The affairs of ordinary commerce might safely and better be left to the regulation of the natural influences and laws of trade, in the absence of clear demonstrations of substantial wrong done. An insurance company can scarcely be deemed to sustain relations to the people equivalent to those of inn-holders and common carriers, and properly amenable to like control by public law." "The Color Line in Insurance."

making and pricing of risks.[107]

Second, challenging actuarial distinctions and asserting the legitimacy of the state to oversee the formation of actuarial categories also made distinctions visible in public discourse and subject to demands for justification. When challenged, companies had to defend and explain their classificatory systems and often did so by making their assumptions about racial hierarchies and differences explicit. This allowed for a contestation of the racial ideologies that informed the formation of actuarial categories. In Massachusetts, for example, the debate about the passage of anti-discrimination legislation effectively challenged a particularly virulent racist narrative that sought to naturalize the legacy of slavery and the immediate aftermath of Emancipation by maintaining that comparatively higher mortality rates amongst African American reflected inherent biological inferiority.[108] Representative Chappelle rejected predictions that differences in mortality rates would persist. He offered a more hopeful narrative—one that saw Emancipation as the promise of future equality of conditions rather than as the beginning of permanent inequality or terminal decline.[109] The debate about the pricing and assessing of risk, therefore, revealed the commodification of risk as a site of race-making and sought to actively contest what visions of race and racial futures would be incorporated into the commodification of risk.

Finally, the public debate about the appropriateness of certain actuarial categories politicized economic practices invested with public interest and established a criterion of racial justice as an evaluative standard for governing such economic practices. The great strength of this approach was that it politicized those political practices in which the public had a legitimate interest. In other words, it established a precedent in which the public

---

107. Other regulatory initiatives with regards to the life insurance industry had likewise extended state oversight. However, they had focused on shoring up policyholders' rights and overseeing the financial stability of insurance companies. The regulation had not, by contrast, concerned itself with the legitimacy or appropriateness of actuarial distinctions or categories.
108. Bouk, *How Our Days Became Numbered: Risk and the Rise of the Statistical Individual.*
109. Ibid., 31-33.

interest in the provision of certain economic goods could function as the basis for intervening in their distribution and laid claim to articulating the criteria for legitimate forms of access to certain private goods invested with a special public interest, such as public inns, railroads, theaters—and, potentially, insurance. Outlawing the admissibility of certain criteria of distinction, differential treatment, and exclusion, such as race, became constitutive of what I call a liberal politics of taboo—the idea that certain "protected" criteria were inadmissible in governing access to public accommodations, even if those were privately owned.

This strategy—mobilizing the power of the state to regulate interactions in civil society—unsettled existing boundaries between private and public, and contested more restrictive understandings of civil rights. Many opponents of civil rights legislation sought to draw a clear line between the use of racial distinctions in law and the use of racial distinction in the private (read: the social and economic) realm. They argued that anti-discrimination legislation constituted a form of illegitimate interference in the private and social realm. This argument was made both with regards to the legislation concerning life insurance, as well as more broadly with regards to civil rights legislation. Opponents of anti-discrimination legislation in the life insurance industry, for example, argued that it constituted an "impolitic interference with business",[110] as well as that "the person who takes a risk [i.e., the insurance company] should have something to say about it."[111] Similarly, during the landmark case before the New York Court of Appeals, People v. King (1888), an ice rink owner, sought to contest the state's civil rights law as an unconstitutional infringement on his property rights.[112] He argued, "[a] law that prescribes that the owners of private property […] shall devote it to the use of colored people is unconstitutional and void".[113] Advocates of the insurance anti-discrimination bills criticized and contested such restrictive understandings of

110. "The Legislature," *Springfield Republican*, April 12 1884.
111. "The Color Line in Insurance."
112. McBride, "Fourteenth Amendment Idealism: The New York State Civil Rights Law, 1873–1918," 215.
113. Ibid.

civil rights. T. Thomas Fortune, for example, argued that “civil rights are those rights that *all public benefits* [my emphasis] sought to be obtained by or insured to individuals by the organization of mankind into government for mutual advantage and protection in which no member possesses any legal prerogative to enjoy any larger share of such public benefits or to enjoy any benefits not common to each and every one of his fellow citizens.”[114] This was an ambitious political vision, and one that could lay claim to making a radical contribution: it established racial justice as an evaluative standard in the distribution of private property invested with a public purpose.

The Limits of the Civil Rights Vision

For all its strengths, this politicization of economic practices was also limited in its efficacy and conceptual reach. It did not argue for a redistribution of the cost of an unequal distribution of risks, but instead construed the wrong of racial discrimination as unequal treatment given the same conditions and characteristics—or equal treatment under equal conditions. This focused the debate on the question of whether racial differences in mortality rates existed and obscured the question of whether the financial cost of existing racial differences should be redistributed. Consequently, black legislators and political activists such as Julius Chappelle, W.W. Ferguson, W.H. Johnson, Jere Brown, T. Thomas Fortune, and McCants Stewart concentrated on rejecting the claim that racially differentiated rates were necessary in order to account for the higher mortality risk of African Americans. They argued that any distinction based on race was arbitrary and prejudicial. During the debate in the Massachusetts legislature, for example, Julius Chappelle explicitly argued that “decision[s] against negroes should not be made on the arbitrary reason of color” because the

114. T. Thomas Fortune, "Civil Rights and Social Privileges," in *T. Thomas Fortune, the Afro-American Agitator : A Collection of Writings, 1880-1928*, ed. Shawn Leigh Alexander (Gainesville: University Press of Florida, 2008).

claim that black mortality rates were higher than white mortality rates was misleading.[115] "No statistics," Chappelle asserted, "had yet proved that the colored people of Massachusetts do not live as long as the whites"—an opinion that was consistently echoed by advocates of the anti-discrimination bill.[116] When Representative Williams of Foxboro cited statistics[117] that documented differential mortality rates in Richmond, Baltimore, and the District of Columbia, Julius Chappelle challenged the validity of using Southern mortality statistics to predict the future mortality rate of African Americans and argued that such statistics had little predictive power.[118] The use of black mortality rates in the South in a post-Emancipation world was illegitimate, Chappelle argued, because it overestimated black mortality rates by naturalizing the legacy of slavery and the Civil War: "Colored people have been working for themselves in the South only 20 years. The whites [are] well cared for and did not do

---

115. "Untitled," *The Weekly Underwriter* 30, no. 14 (1884). See also *Boston Daily Advertiser*, April 1, 1884; 8.
116. *Boston Daily Advertiser*, April 12, 1884. See also, "Discrimination," *New York Freeman*, April 30 1887.
117. Representative Williams used statistics from the *Sanitary Engineer*, March 22 1884, which provided the following mortality statistics: District of Columbia: 18.80 (white) vs. 55.90 (black); Richmond, Virginia 15.60 (white) vs. 41.60 (black); Baltimore, Maryland: 1881 14.87 (white) vs. 38.12 (black); 1882 19.70 (white) vs. 34.70 (black) 1883 20.4 (white) vs. 27.5 (black). *See* "The Legislature: Report Against a Constitutional Convention (No Discrimination Against Colored Persons)", *Boston Daily Advertiser* (Boston, Massachusetts), Saturday, April 12, 1884; pg. 8; Issue 89. The source merely records that this is "for a given time per thousand." I could not locate the copy of the *Sanitary Engineer* to which Williams refers, but I was able to track down a later issue of the *Sanitary Engineer* from June 12, 1884. The *Sanitary Engineer* reported weekly mortality statistics, which it also used to project annual death rates per 1000 residents. It is therefore possible that Williams is here referring to a projected annual death rate that is based on weekly mortality data. However, since he had access to annual data for 1881, 1882 and 1883 in the case of Baltimore, it is also possible that the *Sanitary Engineer* published a more expansive mortality table in the issue he is referring to. *See* "Report of Mortality in Cities of the United States for the Week ending in May 31," *The Sanitary Engineer*, Vol. 10, No. 2, June 12, 1884, p. 35. I did not have access to the archives of the three main providers of industrial insurance at the time and so do not know exactly what data they relied on. However, in 1898, *The Independent*, an insurance journal, reported the mortality experiences of the companies as follows: "The John Hancock reported the mortality about one-half higher among Negroes than among whites, so that insuring the two races on the same terms is impracticable. The Prudential replied to the Indicator's inquiry at considerable length. Having for five years made no discrimination between the races, the company found, in 1881, that the number of claims paid on colored risks was out of proportion to the number of such risks; and an investigation so plainly showed a higher mortality that new tables were constructed, giving one-third less insurance for the money in case of adults (12 to 70) and 40 percent less on infants (1 to 12) than to whites. Thereafter mortality was separated and tabulated by color; and special search and study among health reports and census reports was made. From 1884 to 1893 inclusive, the company's experience showed an average loss per $1,000 at risk of $16.96 among whites, and $21.63 among blacks. *See* "Insurance: The Negro as a Life Risk", *The Independent: Devoted to the Consideration of Politics, Social and Economic Tendencies*, February 10, 1898.
118. For an excellent account of the debate in the Massachusetts legislature, see Bouk, *How Our Days Became Numbered: Risk and the Rise of the Statistical Individual*. He characterizes the anti-discrimination legislation as a rejection of fatalizing (i.e., a rejection of the idea that the past can predict the future given the changes introduced by Emancipation).

anything but cut sticks and whistle. Statistics from such data [can] not be cited against the colored people".[119] Senator Cronin echoed this argument in the Senate debate and expressed the hope that this bill in favor of equal rights would not be defeated in consideration of tables of mortality compiled in antebellum days.[120]

However, while opponents and proponents of anti-discrimination disagreed when it came to the existence of differences in mortality rates, they converged when it came to the validity of actuarial justice. Both sides agreed that *if* there was a difference in mortality, this difference constituted legitimate grounds for differential treatment. At best, this eschewed the question of who was responsible for the financial cost of unjustly low statistical expectations due to a history of disadvantage. In other words, supporters of the anti-discrimination bills did not call into question the actuarial conception of justice in the distribution of the financial costs of risks. What they contested, instead, was, first, the assertion that race correlated with risk (and the devaluation of black life that often went hand in hand with this assertion) and second, the incomplete and arbitrary application of the principles of actuarial justice.

At first glance, the struggle of discrimination against the insurance industry may seem to confirm a broader narrative about civil rights activism as legalistic in nature and aiming 'merely' at de jure equality without effecting de facto equality. As Susan Carle has put it, this "critique argues that civil rights lawyers and other activists too greatly emphasized court-focused strategies aimed at achieving what would turn out to be Pyrrhic "civil" rights victories—i.e., gains solely in "formal" equality through requirements enshrined in law as to how the state must treat its citizens, to be concerned, first and foremost, with the establishment of formal, de jure equality without being capable of establishing de facto equality."[121] This critique was also leveled by some prominent black intellectuals against

119. "The Legislature: Report Against a Constitutional Convention (No Discrimination Against Colored Persons)," *Boston Daily Advertiser,* April 12, 1884, 8.
120. "Color Discrimination in Insurance", *Boston Journal*, April 25, 1884, 3.
121. Carle, "Debunking the Myth of Civil Rights Liberalism: Visions of Racial Justice in the Thought of T.

Fortune and his generation. Famous labor activist A. Philip Randolph, for example, later characterized Fortune and his contemporary fellow "race radicals" thus: "The elder race radicals such as Frederick Douglass, Bishop Daniel A Payne and Henry McNeal Turner, Monroe Trotter, Kelly Miller, W.E.B. Du Bois, James Weldon Johnson, the Grimkes, T. Thomas Fortune, etc. struck out against the race's detractors of the ilk of former Confederate slave masters, Thomas Dixon, Vardaman and Blease, instead of guarding against the race's exploiters, such as the pawn-brokers, loan sharks, turpentine still and plantation owners who foster peonage and tenant farming; and the lumber mill and railroad barons who overwork and underpay the black proletariat."[122]

Does this critique, which has been leveled against the modern civil rights movement, simply apply to this earlier instance of civil rights activism, too? After all, I have here argued that the civil rights vision of equal access to insurance did not address the underlying de facto inequality that led to higher mortality rates amongst African Americans. Does this mean that civil rights activism, at the time, simply did not offer the conceptual resources for a more radical approach to the distribution of the costs of risk?

I do not think that this critique fits here. The early civil rights approach to the question of access to insurance did not simply *ignore* the economic aspects of the issue at hand. Instead, the civil rights vision of equal access to insurance irrespective of race entailed a contestation of private economic power, and thus a particular mode of conceptualizing and contesting the economic aspects of the issue. Characterizing it as concerned with civil and political rights as opposed to economic rights obscures that the civil rights approach to discrimination by insurance companies—at the very least the civil rights vision of Fortune and Stewart—intended to contest and reorganize economic power.

Thomas Fortune, 1880-1890."

122. Philip Randolph, "The Negro and Economic Radicalism," in *African American Political Thought, 1890-1930: Washington, Du Bois, Garvey, and Randolph* (Armonk, N.Y.: M.E. Sharpe, 1996), 302-03.

The reason that this is so hard to see is, I believe, partly due to the rhetorical strategies used by these advocates of anti-discrimination legislation as entailing nothing more than the equal application of already existing rules. That, I believe, was a misrepresentation of their own political vision, albeit a rhetorically powerful one. This misrepresentation lives on in what one might call a "stage theory" of the relationship between racial and economic justice, which represents racial justice as requiring the complete and unbiased application of 'capitalist norms,' and that sees economic justice as a step to be completed afterward.

What is true, however, is that the principle according to which they contested economic power was flawed and insufficiently ambitious: As I have argued, their reordering of economic relations simply did not contest the idea that everybody ought to be held financially responsible for the risks they represented. It acquiesced to a practice of turning statistical expectations into a basis for differential treatment. It contested private economic power, subjecting it to public scrutiny, but it acquiesced to transforming statistical expectations into private property. It accepted that each individual was financially responsible for their statistical expectations, instead of recognizing that the attribution of financial responsibility in risk-making practices could have become a site of claims for corrective justice rather than claims for equal treatment irrespective of race.

But there are other resources in the political thought of Fortune and Stewart that were not limited in the same way. Fortune and Stewart also offered more ambitious visions of the public reordering of economic relations when it came to other aspects of economic life, including land and labor. Here, as in the insurance case, Fortune and Stewart advocated a public restructuring of economic relations and economic power. But when it came to land and labor—rather than risk—Fortune and Stewart advocated for a much more ambitious contestation of economic power, and economic relations. Fortune and Stewart both entertained "economic doctrines of a […] radical tinge" in the 1880s, that were distinctive

from the doctrine of "thrift and industry," advocated by Booker T. Washington, or the anti-materialist critique of American capitalism advocated by Alexander Crummell and the early W.E.B Du Bois.[123]

With regard to land and labor, Fortune, in particular, argued for reparations for slavery, the redistribution of land, cooperative businesses, and extended state control over the economy. Stewart, while less consistent than Fortune, also proposed limiting the earnings of invested capital, establishing state control over key industries, and legislating shared earnings for employers and their employees.[124] For both Stewart and Fortune, it was clear that broad state interventions were necessary in order to make even the semblance of an opportunity of equality possible. At a minimum, both Fortune and Stewart maintained that three kinds of intervention were necessary: First, African Americans' political and civil rights—including property rights—had to be safeguarded in a meaningful way. Stewart, for example, saw a direct connection between the violation of votes and economic dispossession and exploitation, and argued that any kind of racial self-help or uplift depended on secure property rights: "So you see, these fellows, who suppress votes will suppress cash if they think they can safely do so."[125] Second, explicit and legally sanctioned unequal treatment on the basis of race—such as the use of race as a marker of risk—had to be abolished. Finally, they maintained, the state had to actively intervene in order to ensure fairer entry to the market. This meant anti-trust legislation, redistribution of land, and legal limits on corporate earnings that would counteract the progressive concentration of capital. Against this background, it becomes clear that Fortune and Stewart had a broad view of the requirements

---

123. Meier, *Negro Thought in America, 1880-1915: Racial Ideologies in the Age of Booker T. Washington*, 46; Wilson Jeremiah Moses, *The Golden Age of Black Nationalism, 1850-1925* (Hamden, Conn.: Archon Books, 1978). p.81; W. E. B. Du Bois, The Souls of Black Folk, (Project Gutenberg, 2008), https://www.gutenberg.org/ebooks/408. loc.818.
124. Fortune, *Black and White: Land, Labor and Politics in the South.*,T. McCants Stewart, "An Industrial Servitude ?," *The New York Age*, March 17 1888, 1.
125. "South Carolina Politics," *The New York Age*, August 30 1890, 1.

of racial economic justice.

It is painfully evident, however, that the hopes for the realization of this broader political program were slim at best. While Chappelle, Fortune, and Stewart were struggling to get civil rights legislation on the books, political interest in the predicament and fate of the freedmen was rapidly declining. Fortune, in particular, reflected on the narrow possibilities for political action. He argued that "we must adjust ourselves to the order of things"[126] and maintained that black survival called for pragmatic strategies, even if they were contrary to true principles of justice.

With regards to insurance, therefore, advocates of anti-discrimination legislation in the life insurance industry, including Fortune and Stewart, did not develop a conceptual or political language that successfully challenged the principles of actuarial justice. Consequently, they did not find a way to talk about the social nature of risks—the disproportionate extent to which the risks to which African Americans were exposed due to past and present injustice, and the ways in which the costs of these risks should be redistributed—or, to use a different term—borne collectively. However, these conceptual resources were and are available elsewhere in their thought. The fact that they did not articulate it with regards to life insurance may have been due to pragmatic political concerns, the availability of civil rights discourse as the only legitimate form of claim-making for racial justice (and one that was already being marginalized at this point in time) or the conceptualization of risk as a consumer good rather than as a key site of the production and reproduction of racial economic inequality. Whatever the explanation for the conceptual limitations of their vision of equity in insurance markets, however, it is important to recognize that they nonetheless made an important—if limited—contribution to the

---

126. T. Thomas Fortune, "Who Will Own the Soil in the Future?," in *T. Thomas Fortune, the Afro-American Agitator : A Collection of Writings, 1880-1928*, ed. Shawn Leigh Alexander (Gainesville: University Press of Florida, 2008 (1883)), 5.

politicization of risk according to criteria of racial justice.

Conclusion

This chapter has analyzed the way in which risk, as a financial commodity, and race, as a political and legal category, became entangled in the 19th century. I have argued that the Afro-American League's struggle against the use of race as a proxy for risk gave rise to a discursive formation that would echo in later efforts to undo the articulation of risk and race. It established a specific mode of challenging the rule of race in the commodification of risk and, as "The Credit They Deserve" will show, some of its basic assumptions about how to think about the relationship between race and risk as a financial commodity continue to echo in our present-day discourses.

This mode of challenging the rule of race constituted a crucial politicization of risk-making practices. I have here argued that it was not a strategy that ignored economic issues, as is sometimes alleged. Instead, it established a *particular mode of contesting economic power* by institutionalizing public oversight over the private power of insurance companies to classify and price 'life risks.' The trouble with this strategy, however, was twofold: First, rather than contesting the for-profit privatization of individual statistical expectations, early civil rights activists contested the power of insurance companies to make arbitrary risk classifications by invoking the principle of 'to each according to their risk.' Second, and closely related, early civil rights activists saw the use of race as a proxy for risk as rooted in myths about racial inferiority and irrational racial prejudice *bar* any economic rationality, rather than as a reflection of racial discrepancies in health and life expectancy. Doubtlessly, racial myths about "inherent biological weakness" or even "race death" were important aspects of the racial practices of insurance companies. The narratives about racial difference mattered greatly in the formation of risk categories. But the narratives about racial difference

did not exhaust the scope of the problem. There were underlying racial disparities in life expectancies. By focusing on the former to the exclusion of the latter, early civil rights activists committed themselves to proclaiming an equality of conditions that did not exist—and that does not exist to this day. This foreclosed problematizing the privatization of statistical expectations in a context in which structural racism continuously produced unjustly low statistical expectations for black Americans. Had they acknowledged existing racial disparities in life expectancy, it would have opened up the possibility of arguing for claim of corrective justice rather than formally equal treatment. Chappelle, Fortune and Stewart could have argued that, given the unjust distribution of risks, risk-making practices that based one's financial responsibility on one's statistical expectations was unjust, and that the existence of such unjustly low statistical expectations necessitated a pooling of risks.[127] Instead, however, Chappelle, Fortune, and Stewart appealed to dominant notions of fair risk-making practices and did not contest actuarial justice as an evaluative standard for a racially just distribution of the costs of risk. The failure to challenge the precepts of actuarial justice, I have argued, resulted in a narrow vision of what racial justice required. It obscured the question of who was to be held responsible for accumulated historical and present disadvantage and injustice and did not advance a case for redistributing the burden of this unjust history. Of course, even if Chappelle, Stewart, and Fortune had had a more ambitious vision of contesting the commodification of risk, there would have been very little chance of ever realizing it, given their political moment. The activities of the Afro-American League, after all, took place during a time when civil rights victories were nullified by the Supreme Court, freedmen were abandoned by the Republic Party, and racial violence and lawlessness were pervasive. This critique, therefore, does not aim to criticize the political acumen of Chappelle, Fortune, or

127. This could have resulted—as it did for Du Bois, years later—in a rejection of for-profit insurance as such. But it would have also been compatible with a modified form of for-profit private insurance, where the state mandates a pooling of risk and companies therefore cannot compete on the selection of the 'best' risks.

Stewart. Instead, I think that the critique is important because it continues to inform contemporary discourses about the relationship between racial economic justice in the U.S.

The next chapter will demonstrate how contemporary discourses about the race/risk nexus are still informed by an actuarial conception of racial justice in financial markets by turning to a debate that is much closer to our own political moment, namely the debate about racial discrepancies in subprime lending in the run-up to the 2007/2008 financial crisis.

CHAPTER 2: THE CREDIT THEY DESERVE: RACE, RISK AND SUBPRIME LENDING

> "In accepting substantial inequality as a neutral base line, a new form of whiteness as property was condoned. Material inequities between Blacks and whites - the product of systematic past and current, formal and informal, mechanisms of racial subordination - became the norm." Cheryl Harris[1]

Introduction

In *The Pursuit of Happyness*, Will Smith plays a savvy but unlucky African American salesman who loses everything—including his home and his wife—but eventually ascends to the seven heavens of high finance as a stockbroker through sheer determination and single-mindedness.[2] In the film, entry to the glitzy, hectic world of men in suits shouting on the exchange floor spells the end of the protagonist's struggles with homelessness, poverty, and desperation. This snapshot of Hollywood's fantasy of the good life, with its not-so-subtle undertones of racial uplift, fit well with a popular narrative that promised a brighter future for all through the democratization of finance throughout the 1990s and early 2000s. The growing sophistication of a deregulated financial industry, with its heightened agility and ability to hedge against risks and uncertainties, it was claimed, would benefit those who had traditionally remained locked out of the credit economy—women, "minorities," and low-income borrowers.[3] Hedging against risks in ever more complicated and ingenious ways, it

---

1. Harris, "Whiteness as Property," 1753.
2. Gabriele Muccino, "The Pursuit of Happyness," (Columbia Pictures, 2007).
3. A note on terminology: Critical race theorists have argued that "minority," as a term, can easily naturalize processes of subordination. Some prefer the term "minoritization," which indicates an active process rather than a pre-existing state. See Michael Benitez, "Resituating Culture Centers within a Social Justice Framework: Is There Room for Examining Whiteness?," in *Culture Centers in Higher Education: Perspective on Identity, Theory and Practice*, ed. Lori Patton (Sterling, Virginia: Stylus, 2010). I here use the term "minority" advisedly, because it was the term most often used in the debate about racial discrepancies of subprime lending to highlight the promise and success of subprime lending. Maintaining the use of the term in this instance seems important, not because it is particularly apt, but because of its inherent ambiguity: it is primarily used to refer to Latinx and African American borrowers and communities. But the use of the term "minority" masked the differences in the

was argued, would allow lenders to offset the risks that these new financial subjects supposedly represented.

Indeed, the deregulation of the financial industry did bring about a revolution in access to credit, which was especially palpable in the mortgage sector. The rise of subprime lending in the late 1990s radically changed the landscape of credit.[4] Black and brown neighborhoods that mortgage lenders had previously shunned as too risky suddenly became inundated with subprime mortgage capital.[5]

Initially, some hailed subprime lending as a solution to the perennial problem of redlining.[6] However, when *The Pursuit of Happyness* was released, subprime lending had already revealed itself as a nightmare rather than a dream come true in many African American and Latinx neighborhoods. Far from being part of the solution of addressing a racialized system of access to credit, it exacerbated racial economic inequalities. As borrowers defaulted on mortgages, subprime lending left a trail of devastation behind. Instead of closing the racial wealth gap by helping previously excluded African American and Latinx

---

historical experiences of African American and Latinx borrowers, and often resulted in a profoundly a-historical approach to understanding as to why subprime lending was concentrated disproportionately in predominantly Latinx and African American neighborhoods.

4. Subprime mortgages are defined as mortgages that have higher interest rates than fixed-rate, 30-year prime mortgages. They include variable-interest rate loans, balloon payments, negative amortization and higher up-front fees.

5. Gary A. Dymski, *The Bank Merger Wave: The Economic Causes and Social Consequences of Financial Consolidation* (Armonk, N.Y.: M.E. Sharpe, 1999). "Racial Exclusion and the Political Economy of the Subprime Crisis," *Historical Materialism-Research in Critical Marxist Theory* 17, no. 2 (2009). Jacob S. Rugh, Len Albright, and Douglas S. Massey, "Race, Space, and Cumulative Disadvantage: A Case Study of the Subprime Lending Collapse," *Social Problems* 62, no. 2 (2015).

6. Redlining refers to the practice of denying credit on the basis of the racial make-up of a neighborhood. It was first adopted as an explicit policy in the 1930s by federal housing agencies that guaranteed privately issued home mortgages. The Home Owners Loan Company (HOLC) developed appraisal standards designed to evaluate credit risks of neighborhoods. HOLC classified racially mixed and predominantly black neighborhoods as high risk. HOLC appraisal standards soon became the dominant underwriting standard in the industry. They were adopted by the Federal Housing Administration (FHA) that used HOLC underwriting standards as the basis for making decisions about insuring loans, excluding all racially mixed and black communities from FHA insurance. These underwriting practices not only occasioned massive disinvestment from black communities, they also endorsed and further entrenched private practices that articulated blackness as financial risk. Since then, the term 'redlining' has come to denote a wider range of discriminatory practices by public and private actors in credit markets. See Jackson, *Crabgrass Frontier: The Suburbanization of the United States*. Richard Rothstein, "The Making of Ferguson Public Policies at the Root of Its Troubles," (Washington: Economic Policy Institute, 2014).

borrowers climb the property ladder, the rise of subprime lending had the opposite effect. In the aftermath of the financial crisis, black and brown communities were disproportionally hard hit by the foreclosure crisis and by the decline in housing values and household wealth.[7] Modest advancements in closing the racial wealth gap were reversed.[8] What some had hailed as a potential remedy for one of the most obvious racialized inequities of contemporary U.S. American capitalism—access to credit—instead deepened and exacerbated racial economic inequalities.

The racialized dimensions of the subprime crisis and its aftermath highlight the importance of the allocation of credit—and hence, the importance of the commodification of risk and expected future value—to any analysis of the production and reproduction of racial economic inequality in the late 20th and early 21st centuries. In this chapter, I use the case of racial discrepancies in subprime lending as an exemplary case to analyze the articulation of race and risk in financial markets. I argue that a careful analysis of the debate about racial discrepancies in subprime lending is both politically revealing and theoretically instructive because it documents the narrow political vision of racial economic justice that was hegemonic in the run-up to the subprime crisis. This narrow political vision of racial economic justice marked the refusal of collective responsibility to remedy past injustice and address the valorization of whiteness. It also constituted an abdication of democratic control over the allocation of credit in pursuit of racial economic justice.

I show that the debate about racial discrepancies in subprime lending converged

---

7. Jeff Crump et al., "Cities Destroyed (Again) for Cash: Forum on the U.S. Foreclosure Crisis," *Urban Geography* 29, no. 8 (2008). Melvin L. Oliver and Thomas M. Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality* (2006); Jacob S. Rugh and Douglas S. Massey, "Racial Segregation and the American Foreclosure Crisis," *American Sociological Review* 75, no. 5 (2010); Rakesh Kochhar, Paul Taylor, and Richard Fry, *Wealth Gaps Rise to Record Highs between Whites, Blacks and Hispanics*, Pew Research Social & Demographic Trends (Washington, D.C.: Pew Research Center Washington, DC, 2011).The impact of declining housing values has been amplified by the fact that African American and Latinx families hold fewer financial assets and therefore have not profited significantly from the recovery of the stock market in 2009. See Signe-Mary McKernan, *Less Than Equal: Racial Disparities in Wealth Accumulation*, ed. Caroline Ratcliffe, et al. (Washington, DC: Urban Institute, 2013).
8. Mishel, *The State of Working America*, 385ff.

around a commitment to actuarial justice. Appeals to the notion that each consumer, regardless of their race, should be treated in accordance with their risk, delimited the debate about what, if anything, ought to be done to address racial discrepancies in subprime lending. In framing the debate around a common commitment to ensuring fair access to *risk-based* credit, the fairness of holding those previously excluded responsible for the risk they represented was not effectively problematized or questioned. In other words, a debate about how the existing distribution of creditworthiness had come about, and what role race had played in this process, was displaced. This is not to say that there were not voices that tried to raise this issue—some representatives of fair lending organizations, such as John Taylor from the National Community Reinvestment Coalition (NCRC), for example, sought to question the appropriateness of meeting the credit needs of "traditionally underserved communities," through subprime loans.[9] But these voices remained marginalized and often had to conform to the main parameters of the debate in order to be heard.

I argue that this also constituted an abdication of democratic control over financial institutions. This occurred on two levels: On the one hand, the debate about racial discrepancies in subprime lending was itself a debate about the extent to which risk-making practices ought to be governed by democratic institutions. While advocates of deregulation and supporters of the subprime industry argued that risk-making practices were best left to private parties, critics of the industry and fair lending activists highlighted the ways in which risk-making practices required continuous supervision and intervention in order to ensure genuine financial inclusion and prevent the abuse or exploitation of existing power and information asymmetries in the market. On the other hand, I argue that even this more expansive understanding of the role of democratic control over practices of valuation that

9. *Predatory Lending Practices: Hearing before the Committee on Banking and Financial Services*, 106th Cong. 52 (2000) (statement of Tommy Curry, Commissioner of Banks for the Commonwealth of Massachusetts).

insisted on democratically legitimated supervision of risk-making practices nonetheless remained limited. It remained limited because it conceptualized democratic governance as a tool for enforcing market discipline, aiming to ensure that the structure and organization of the market enforced the allocation of credit in accordance with an objective, pre-existing distribution of creditworthiness. This was, in effect, a narrowing of the political vision of what fair lending policies ought to be in a market and society deeply structured by racial economic inequality. It surrendered the ambition to make the political construction of creditworthiness mean more than the mere enforcement of valuation practices in accordance with pre-existing societal regularities. It construed the problem of racial discrepancies in subprime lending as a phenomenon of private lenders engaging in risk practices that deviated from the objective distribution of creditworthiness due to an irrational devaluation of blackness, instead of seeing the widespread societal devaluation of blackness as partially constitutive of the objective distribution of creditworthiness. As I have argued previously, the articulation of risk and race in financial markets was and is not solely a matter of perceptions of creditworthiness distorted by the valorization of whiteness, and the devaluation of blackness. Creditworthiness itself has been distorted by the valorization of whiteness and the devaluation of blackness, both past and present.

This chapter will be organized as follows: First, *The Rise of Subprime* sets the scene and provides some context by sketching the rise of subprime lending. In *Race or Risk?* I then turn to the emerging debate about the concentration of subprime lending in majority black neighborhoods in the mid-1990s and early 2000s. While the debate itself almost always conflated the issues of the concentration of subprime lending in predominantly Latinx neighborhoods and the concentration of subprime lending in predominantly black neighborhoods, I focus on racial discrepancies in subprime lending as they affected

predominantly black neighborhoods. I do so in order to be able to highlight the historical role of anti-blackness in the U.S. housing finance market. Such an analysis could be extended to include other forms of racialization, but this would necessitate a historically specific tracing of the articulation of that form of racialization with housing finance valuation practices. Too often, racial discrepancies in subprime lending are treated as a single issue. This tends to result in a-historical accounts of the issue.

My analysis of the debate is based on a close reading of Congressional hearings on the subprime market, its regulators and market participants, as well as hearings on predatory lending practices and possible policy solutions. These hearings range from the mid-1990s, when subprime lending first took off, to the onset of the financial crisis in 2007/2008. They include hearings before the House Judiciary Committee, the House Committee on Financial Services (previously the House Committee on Banking and Financial Services), the Senate Committee on Banking, Housing and Urban Affairs, and the House Committee on Oversight and Reform. Hearings include testimony by regulators of the mortgage market, i.e., officials from the Federal Reserve (Fed), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Federal Deposit Insurance Company (FDIC) and the Federal Trade Commission (FTC). In addition to governmental agencies, other stakeholders also participated in hearings, such as representatives of financial services trade organizations, e.g., the American Mortgage Bankers Association (AMB), the National Association of Mortgage Brokers (NAMB), and the Financial Services Roundtable, and consumer protection groups, community-based fair lending groups, and civil rights groups, e.g., the National Community Reinvestment Coalition (NCRC), the National Training and Information Center/People's Action, and the NAACP. I also examined discussions of the most prominent anti-predatory lending legislation proposed in the 106th, 107th, 108th, 109th and 110th Congresses. Lastly, I examined policy documents and reports issued by regulators, fair

lending activists and consumer protection groups on predatory lending and racial discrepancies in subprime lending during the same period.

On the basis of these sources, I explore the debate about racial discrepancies in subprime lending in order to illustrate different conceptions of the race/risk nexus. Despite substantive disagreements about the pragmatics of financial risk practices in the mortgage market and the role of race in structuring the outcomes of that market, I argue that actuarial justice emerged as the regulative ideal of the debate and explore how it displaced more expansive visions of what constituted a fair remedy to the legacy of racial exclusion in the housing finance market.

The rise of subprime lending

The emergence of subprime lending was made possible by the rise of securitization and the deregulation of financial markets in the 1980s.[10] Attempts by the Federal Reserve to control inflationary pressure by raising the interest rate produced an unexpected and unintended result: In combination with regulations governing the interest rates that depository institutions could pay their depositors, it led to a credit crunch in the housing market.[11] At the same time, rising interest rates increasingly came into conflict with constitutional state anti-usury laws, further depressing the availability of credit.[12] The perceived urgency of addressing the credit crunch and ensuring an expansion of capital in the housing sector was further amplified by

10. Kevin Gotham provides a useful gloss on the deregulation legislation that enabled the rise of subprime. *See* K. F. Gotham, "Cascading Crises: The Crisis-Policy Nexus and the Restructuring of the U.S. Housing Finance System," *Critical Sociology* 38, no. 1 (2012): 113. For a detailed account of the short-term policy dilemmas that gave rise to these deregulatory initiatives, see Greta Krippner, *Capitalizing on Crisis: The Political Origins of the Rise of Finance* (Cambridge, Mass.: Harvard University Press, 2011). For an excellent and exhaustive account of the legislative history of DIDMCA, see Cathy Lesser Mansfield, "The Road to Subprime Hel Was Paved with Good Congressional Intentions: Usury Deregulation and the Subprime Home Equity Market," *ScL REv.* 51 (1999). Louis Hyman, *Debtor Nation: The History of America in Red Ink* (Princeton: Princeton University Press, 2011).
11. Krippner, *Capitalizing on Crisis: The Political Origins of the Rise of Finance*.
12. Mansfield, "The Road to Subprime Hel Was Paved with Good Congressional Intentions: Usury Deregulation and the Subprime Home Equity Market."

the escalating urban crisis. Access to credit was portrayed as a potential remedy for riots against deteriorating housing conditions in 'inner cities'.[13] As then FHA commissioner Philip Brownstein put it: "our innovations and aggressive thrusts against blight and deterioration, our massive efforts on behalf of the needy, will be lost without an adequate continuing supply of mortgage funds."[14]

In response to the credit crunch—and under pressure from "large financial firms and associated interest groups"—Congress passed deregulatory legislation that preempted state usury laws and state restrictions on permissible loan terms.[15] Congress passed the Depository Institutions and Monetary Control Act (DIDMCA) in 1980, and the Alternative Mortgage Transaction Parity Acts (AMTPA) in 1982. DIDMCA preempted state interest rate ceilings, while AMPTA legalized a number of previously prohibited loan terms for so-called "alternative loans." Newly legalized loan terms included variable-interest rate loans,[16] pre-payment penalties, balloon payments,[17] and negative amortization.[18] These new loan terms allowed lenders to shift financial risk onto borrowers, while the preemption of state usury laws made it possible to adjust interest rates in accordance with the risk that "non-traditional" borrowers represented—or so the theory went. In addition to increasing the flow of mortgage capital, therefore, the deregulation of mortgage lending supposedly had the positive side effect of "democratizing credit" and bringing about the financial inclusion of borrowers that previously had had inadequate access to credit.

---

13. This account is based on the account in Hyman, *Debtor Nation: The History of America in Red Ink*.
14. Philip Brownstein, "The 1968 Housing Bill," *Mortgage Banker* (May 1968): 21. As cited in ibid., 132.
15. Kevin Fox Gotham, *Race, Real Estate, and Uneven Development: The Kansas City Experience, 1900-2000* (Albany: State University of New York Press, 2002), 113. Mansfield, "The Road to Subprime Hel Was Paved with Good Congressional Intentions: Usury Deregulation and the Subprime Home Equity Market."
16. Variable rate interest loans are loans that do not have a fixed interest rate. Instead the interest rate of the loan fluctuates with overall interest rate fluctuations. This makes it more difficult for the borrower to anticipate how high interest rates will be, and shift the risk of interest rate fluctuations onto the borrower.
17. Balloon payment mortgages are mortgages that do not fully amortize over the duration of the loan. The final payment is a "balloon"—i.e., disproportionately large in comparison to monthly payments. The duration of the loan is often shorter than for prime mortgages (fixed-rate, 30-year mortgages).
18. Negative amortization refers to a loan where the initial regular payment is smaller than the interest charged so that the outstanding principal increases.

At the same time, a key financial innovation—securitization—fundamentally changed the flow of capital in housing finance markets. The basic idea behind securitization is straightforward: it turns a future income stream (such as regular mortgage payments) into a tradable financial asset. When a mortgage is securitized, the mortgage originator—for example, an independent mortgage company—issues mortgage loans and then sells these mortgage loans to a so-called arranger. The arranger, commonly an investment bank in the case of private-label securities or a government-sponsored enterprise, such as Fannie Mae or Freddie Mac, in the case of agency-issued securities, reviews, bundles, and prices the loans.[19] In the case of structured finance products, the resulting securities are further sliced into so-called tranches. Tranches enable a hierarchical ordering of investor claims. The securities are then rated by a rating agency, transferred to a SPV (special purpose vehicle) or trust in order to limit liability, and offered to investors.[20]

In conjunction with deregulation, securitization transformed the housing finance market. It increased the availability of credit and changed the composition of market players. Savings and Loans Associations had dominated the mortgage market since the 1960s, but securitization and deregulation made the rise of non-depository lending institutions, such as independent mortgage finance companies, possible.[21] Independent mortgage finance companies often did not hold significant capital reserves. Instead, they relied on a line of credit from Wall Street investment banks. They did not retain originated loans on their portfolio but instead sold the loans to investment banks or other arrangers. This changed the risk-orientation of mortgage originators, who made money from originating mortgages but were insulated from possible losses due to borrower default. It also significantly decreased

---

19. Fannie Mae and Freddie Mac are the colloquial names for the Federal National Home Mortgage Association and the Federal Home Mortgage Corporation, respectively.
20. This account of the securitization process is based on the account in Engel and McCoy, *The Subprime Virus : Reckless Credit, Regulatory Failure, and Next Steps*, 44.
21. Daniel Immergluck, *Foreclosed: High-Risk Lending, Deregulation, and the Undermining of America's Mortgage Market* (Ithaca: Cornell University Press, 2009).

the regulatory supervision of the market, because, as non-depository lenders, many independent mortgage companies were only regulated through the complaints procedure of the Federal Trade Commission. Supporters of the subprime lending industry argued that deregulation and securitization would provide the necessary capital to allow for financial inclusion, while new tools of risk-based pricing would enable lenders to offset the risk that 'non-traditional' borrowers presented. However, this argument did not take into account—or willfully ignored—that subprime lending emerged in a market that was deeply segmented along lines of race.[22]

The origins of the racial segmentation of the housing finance market date back to the New Deal. It was in the aftermath of the 1929 stock market crash and the ensuing Great Depression that the modern U.S. housing finance market took shape. The real estate industry had been particularly hard hit; and the U.S. government, for the first time, took a more active role in the housing market.[23] But in doing so, it not only created the modern housing finance market but also institutionalized and legitimated widespread racial valuation practices in the real estate industry that valorized whiteness. The first serious attempt to stabilize the collapsing housing market came in the form of the Federal Home Loan Bank System (FHLBB), created to supply credit reserves to mortgage lenders and thus revive the housing sector.[24] However, the FHLBB did little to address the most pressing issues in the housing market. It was intended to funnel more capital into the housing market, but it did not provide

22. A. M. White, "Risk-Based Mortgage Pricing: Present and Future Research," *Housing Policy Debate* 15, no. 3 (2004). Dymski, "Racial Exclusion and the Political Economy of the Subprime Crisis."
23. Predictably, foreclosure rates spiked: Non-farm foreclosures went from 68,000 in 1926 to 250,000 in 1933, to "fully half of all mortgages in the United States being technically in default in the spring of 1933." As the housing market collapsed, construction of residential properties of residential properties all but ceased. Jackson, *Crabgrass Frontier: The Suburbanization of the United States*, 193.
24. There had been initiatives to encourage homeownership prior to the 1930s, such as the Own Your Own Home Campaign in 1917, the Better Homes in America campaign in 1921, or the President's conference on Home Building and Home Ownership. Nancy Kwak, *A World of Homeowners: American Power and the Politics of Housing Aid* (Chicago: The University of Chicago Press, 2018), 46-87. They did relatively little, however, to effectively encourage homeownership and failed to alter the landscape of the housing market substantially.

credit for delinquent mortgages or high-risk mortgages. This was hardly what was needed during a severe economic downturn.[25] A more successful attempt to stabilize or reconstruct the housing market came in 1933 with the establishment of the Home Owners Loan Corporation (HOLC), which refinanced mortgages in distress.[26] HOLC was vastly more successful than previous interventions into the housing market and issued new mortgages "to one million homeowners who were in default or had already lost their homes."[27] In order to manage and minimize the risk that the federal government took on by underwriting mortgages, HOLC developed a standardized appraisal system, designed to evaluate the risks and future value of the insured mortgages. HOLC's appraisal system evaluated the housing stock (such as age and condition), the borrower, and the neighborhood in which the mortgage was issued. Neighborhoods were assigned a grade (A, B, C, or D), or color (green, blue, yellow, and red) meant to reflect the neighborhood investment risk.[28] A, the highest rating a neighborhood could receive, indicated neighborhoods that were "in demand in times good and bad" as the HOLC questionnaire put it.[29] According to the HOLC questionnaire, only neighborhoods that were homogeneous along race and class lines, and inhabited by "American professional men" qualified for the highest rating.[30] Jewish neighborhoods, for example, could not receive an A classification, regardless of other socio-economic characteristics, and black neighborhoods were automatically classified as "hazardous." [31] In Detroit, for instance, "every neighborhood with even a tiny African American population was

25. Out of 40,000 individual applications for mortgage assistance, only three were approved. As Kenneth T. Jackson notes, quietly sardonic: "Although we should not minimize the satisfaction of those three families received from this evidence of federal compassion, their own good fortune was not sufficient to reverse the downhill slide of the housing conditions. Jackson, *Crabgrass Frontier: The Suburbanization of the United States*, 194.
26. Ibid., 196. Douglas S. Massey and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (Cambridge, Mass.: Harvard University Press, 1993), 17-60.
27. Amy E. Hillier, "Redlining and the Home Owners' Loan Corporation," *Journal of Urban History* 29, no. 4 (2003): 394.
28. Jackson, *Crabgrass Frontier: The Suburbanization of the United States*, 197.
29. Ibid.
30. Residential Security Maps, HOLC City Survey Files, Record Group 195 as quoted in ibid.
31. Ibid.

rated D or 'hazardous' by federal appraisers and colored red on the security map."[32]

In designing its risk classification system, HOLC drew on hierarchies of racial worth that were, while not standardized to the same extent, well established in the real estate industry at the time.[33] Appraisal handbooks that made use of the racial and ethnic compositions of neighborhoods for assessments of "value trends" were already present in the real estate industry.[34] But HOLC's use of racial criteria in assessing the risk a neighborhood represented lent racial real estate practices the endorsement and legitimacy of the federal government and systematized and generalized racial appraisal standards.[35] HOLCs "maps had a huge impact and put the federal government on record as judging that African Americans,

---

32. Thomas J. Sugrue, *The Origins of the Urban Crisis Race and Inequality in Postwar Detroit*, Princeton Classics. (Princeton: Princeton University Press, 2014), 94.
33. Immergluck, *Credit to the Community: Community Reinvestment and Fair Lending Policy in the United States*, 109-32. See also Gotham, *Race, Real Estate, and Uneven Development: The Kansas City Experience, 1900-2000*, 617.
34. While HOLC designed and used a risk classification system based on racial worth, it did not use the resulting risk classifications to exclude neighborhoods classified as "hazardous" from mortgage insurance altogether. While there is no comprehensive lending data that allows for a full evaluation, the landmark study, *Crabgrass Frontier,* maintained that HOLC made loans in all neighborhoods, including those deemed "definitely declining" and "hazardous" Jackson, *Crabgrass Frontier: The Suburbanization of the United States*, 215. Research by Lizbeth Cohen, John Metzger and Amy Hillier has provided further evidence for the thesis that HOLC did not use its classification system in order to exclude C or D rated areas from lending programs. While some scholars have blame HOLC for initiating redlining, most scholars of the housing market have argued that the damage caused by HOLC was due to its influence on the lending practices of other financial institutions, both public and private, rather than its own lending practices Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America*, New York: Liveright (2017), 63; Jackson, *Crabgrass Frontier: The Suburbanization of the United States*, 203. However, the debate about the extent to which HOLC's Residential Security Maps influenced the lending practices of other financial institutions is ongoing. While some stress the influence of governmental practices in shaping appraisal standards, others have argued that HOLC risk assessment maps were more likely reflections of already existing real estate practices than a significant influence on them. Immergluck, for example, downplays the influence that HOLC had on private lending practices. He argues that "recent evidence suggests […] that HOLC's infamous risk-rating maps were not widely circulated to private-sector lenders and that private lenders were making their own maps independent of HOLC. Some use their own maps before HOLC maps existed, and most lenders did not have access to HOLC maps. Moreover, in the surveys used to construct the maps, surveyors used the avoidance of an area by lenders as an input into an area as undesirable or risky, thus suggested the maps' coding was a result rather than as a cause if private-lender redlining."Immergluck, *Foreclosed: High-Risk Lending, Deregulation, and the Undermining of America's Mortgage Market*, 93.
35. Thomas Hanchett has argued that "[t]he HOLC's work served to solidify practices that had previously only existed informally. As long as bankers and brokers calculated creditworthiness according to their own perceptions, there was considerable flexibility and a likelihood that one person's bad risk might be another's acceptable investment. The HOLC wiped out that fuzziness by getting Charlotte's leading real estate agents to compare notes, and then publishing the results. The handsomely printed map with its sharp-edged boundaries made the practice of deciding credit risk on the basis of neighborhood seem objective and put the weight of the U.S. government behind it." Thomas W. Hanchett, *Sorting out the New South City: Race, Class, and Urban Development in Charlotte, 1875-1975* (Chapel Hill: University of North Carolina Press, 1998), 231.

simply because of their race, were poor risks," as Richard Rothstein has pointed out.[36]

The Federal Housing Agency (FHA), founded through the National Housing Act in 1934, used similar risk classification standards. In distinction to HOLC, however, the FHA pursued a more exclusionary lending policy, and did not lend in so-called "hazardous" neighborhoods.[37] The FHA became a major public underwriter of private mortgages and embraced racial classifications of neighborhoods with a vengeance. As the FHA Underwriting Manual from 1934 states: "protection from adverse influences,"[38] including the "prevention of business and industrial use, lower-class occupancy and inharmonious racial groups"[39] was to be considered one of the "most important features of the Rating of Location."[40] The "Valuator" (assessor) was exhorted to "investigate areas surrounding the location to determine whether or not incompatible racial and social groups are present, to the end that an intelligent prediction may be made regarding the possibility or probability of the location being invaded by such groups. If a neighborhood is to retain stability it is necessary that properties shall continue to be occupied by the same social and racial classes."[41]

The FHA successfully revived the housing market and made homeownership possible for millions of families, but it did so with a strong vision of what constituted 'valuable' housing: white, suburban, and racially segregated. As Dalton Conley explains: "The Federal Housing Authority […] made homeownership possible for millions of Americans after World War II by guaranteeing low-interest, long-term loans for first-time homebuyers. But African Americans were systematically shut out of participation from these programs".[42] In his

---

36. Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America*, 63.
37. John Thomas Metzger, "Social Capitalism in American Cities: Financial Institutions and Community Development" (Columbia University, 1999), x.
38. United States. Federal Housing Administration, "Underwriting Manual: Underwriting Analysis under Title II, Section 203 of the National Housing Act," (1936).
39. Ibid., 197.
40. Ibid., 196. The rating of location was one of the categories that established whether or not the FHA was going to underwrite a mortgage—the other two were borrower and housing stock characteristics.
41. Ibid.
42. Dalton Conley, *Being Black, Living in the Red : Race, Wealth, and Social Policy in America* (Berkeley: University of California Press, 1999), 37.

landmark study, *Crabgrass Frontier*, Kenneth Jackson finds that between 1935-1939, 91% of the homes insured by the FHA were suburban, the vast majority of which were white-only developments—not least because the FHA explicitly required that new suburban developments were racially exclusive in order to qualify for FHA underwriting.[43] David Kirp, John Dwyer, and Larry Rosenthal have calculated that between 1930 and 1960, "fewer than one percent of all mortgages in the nation were issued to African Americans"— at least in part because conventional lenders often required FHA underwriting.[44] The FHA, in other words, openly pursued a policy of segregation that further entrenched residential segregation in a housing market that was already routinely characterized as a dual housing market—one white and one black. Rothstein recounts one particularly egregious example, where the FHA approved a loan for a white subdivision only after the developer had constructed a "half-mile concrete wall, six feet high and a foot thick" separating the new development from an existing black neighborhood.[45] In pursuing an openly segregationist agenda, the FHA contributed to the creation of a segregated housing market and a segmented home financing market. It had a devastating impact on black homeownership and prevented not only the emergence of a "larger class of suburban black homeowners," but also relegated African American homebuyers to older, segregated and often dilapidated inner city neighborhoods, and contributed to the further deterioration of majority African American neighborhoods.[46]

The absence of FHA underwriting further entrenched an already well-established reluctance by many conventional lenders to issue loans in "racially changing" or black neighborhoods, and it exposed first-time black buyers to predatory real estate speculators and brokers, who made a killing by exploiting the existing racially segregated housing market.

---

43. Jackson, *Crabgrass Frontier: The Suburbanization of the United States*, 190-218.
44. David L. Kirp, *Our Town: Race, Housing, and the Soul of Suburbia* (New Brunswick, N.J.: Rutgers University Press, 1995), 26.
45. Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America*, 74.
46. Conley, *Being Black, Living in the Red : Race, Wealth, and Social Policy in America*, 37.

Black first-time homebuyers, in distinction to their white counterparts, did not have access to low-interest, self-amortizing and long-term mortgages, but instead had to rely on so-called installment contracts. Installment contracts were direct contracts between buyers and sellers that only conferred the deed once payment of the entire sum was complete and did not build up home equity during the duration of the loan.[47] The high interest rates imposed by real estate speculators, as well as the high property prices for substandard housing stock that were the result of a dual housing market, meant that first-time buyers were less likely to be able to make their payments. When they missed a payment, they lost all equity, irrespective of how long they had already been paying for the mortgage.[48]

While redlining, as an official FHA policy, ended with the 1948 Shelley vs. Kraemer ruling of the Supreme Court that declared the use of racially restrictive covenants in lending unconstitutional, the legacy of using race as a predictor of risk continued to shape the lending market. This racial segmentation of the lending market was never effectively addressed. During the 1970s and 1980s, banks increasingly and disproportionately abandoned majority black neighborhoods, especially in urban centers. While there were programs in the 1970s and 1980s that sought to extend "minority" homeownership, they did not tackle the racial segmentation of the mortgage market effectively, and thus resulted in forms of exploitative inclusion, as Keeanga Yamattha Taylor has recently chronicled in *Race for Profits: How Banks Undermined Black Homeownership*.[49]

Subprime lending therefore emerged in a market in which race had long structured risk assessment and valuation practices. Consequently, instead of functioning as an extension of the prime mortgage market for a riskier sub-segment of borrowers, the subprime market developed its own logic. Weak regulation, the lack of competitive pressure, and the

---

47. David M. P. Freund, *Colored Property: State Policy and White Racial Politics in Suburban America* (Chicago: University of Chicago Press, 2007).
48. Ibid.
49. Taylor, *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership*.

possibilities for off-loading risk through securitization created the preconditions for exploiting the mortgage market's pre-existing racialized segmentation.

Risk or Race?

The virtues and dangers of subprime lending in general, and the nature and status of racial discrepancies in subprime lending in particular, were subject to intense nation-wide controversies in the run-up to the financial crisis. Given that racial discrepancies in subprime lending were recognized and discussed early on by regulators as well as federal and state legislatures, the contours of the subprime market—including the racialized distribution of subprime lending—must be understood as the outcome of a process of political deliberation and contestation. I here analyze this process by tracing the dominant perspective on racial discrepancies in subprime lending in congressional hearings in the run-up to the financial crisis, between 1993 and 2008. Instead of providing an in-depth account of the history of the anti-predatory lending debate, however, I focus on the main outlines and contours of the debate, and seek to identify the way in which racial discrepancies in subprime lending were conceptualized and contested in debates about the subprime market.[50] I argue that the framing of the debate evinced a narrow conception of the entanglements of race and risk in lending markets and produced a restrictive conception of racial economic justice in financial markets.

During the late 1990s and early 2000s, a number of fair housing alliances, as well as the Department for Housing and Urban Affairs (HUD), published reports that established the racialized distribution of subprime lending.[51] In 1999, the National Training and Information

---

50. For in-depth accounts of the anti-predatory lending movement and debate, see Engel and McCoy, *The Subprime Virus : Reckless Credit, Regulatory Failure, and Next Steps*. Immergluck, *Credit to the Community: Community Reinvestment and Fair Lending Policy in the United States*; Mansfield, "The Road to Subprime Hel Was Paved with Good Congressional Intentions: Usury Deregulation and the Subprime Home Equity Market."
51. HUD, "Final Report and Recommendations of the Predatory Lending Hud–Treasury Joint Task Force," *Washington, D.C.: U.S. Department of Housing and Urban Development* (2000). ACORN, "Separate and Unequal: Predatory Lending in America." Freddie Mac, "Automated Underwriting: Making Mortgage Lending Simpler and Fairer for America's Families," (Washington D.C.: Freddie Mac, 1996).

Center (NTIC), for example, published a report about the devastating impact of predatory subprime lending in the Chicago area. NTIC was a Chicago-based fair lending organization that had been involved in passing the Home Mortgage Disclosure Act and the Community Reinvestment Act.[52] The goal of the study, NTIC stated, was to "sound an alarm about the growing influence of this new and rapidly growing sector"—i.e., subprime lending.[53] The report highlighted the rapid increase of subprime lending and a resulting jump in foreclosures and the abandonment of homes. Based on HMDA data, NTIC showed that the origination of subprime loans in the Chicago area had increased by 1,524% between 1991 and 1997,[54] while *foreclosures* on subprime loans had risen by a dramatic 4,623%.[55] "In the long run," NTIC warned, "predatory subprime mortgage lenders could do worse damage to communities [than payday lenders], since they take people's homes."[56] The NTIC report did not explicitly analyze the racial dimensions of predatory subprime lending, but it inspired a number of further studies that did so. In November, the Woodstock Institute published "Two Steps Back: The Dual Mortgage Market, Predatory Lending, and the Undoing of Community Development," which documented the racial discrepancies in subprime lending in Chicago.[57] It found that 52.9% of loans made in predominantly African American neighborhoods were subprime loans, as compared to 9.39% of loans in predominantly white neighborhoods.[58] A report published by the Department of Housing and Urban Development (HUD) in

---

52. The Community Reinvestment Act was passed in 1977 in order to counter informal redlining practices. The CRA mandates that regulated financial institutions receive that CRA "score" that indicates whether financial institutions are meeting the credit needs of the communities in which they are chartered. CRA scores are then taken into account when approving or denying requests for mergers etc. Over the years, fair housing activists have often criticized the lax implementation of the CRA. Richard Marsico, *Democratizing Capital: The History, Law, and Reform of the Community Reinvestment Act* (Durham, N.C.: Carolina Academic Press, 2005).
53. Toshiko Nagazumi et al., "Preying on Neighborhoods: Subprime Mortgage Lending and Chicagoland Foreclosures," (Chicago: National Training and Information Center, 1999), 5.
54. Ibid., 16.
55. Ibid.
56. Ibid., 5.
57. Daniel Immergluck, "Two Steps Back: The Dual Mortgage Market, Predatory Lending, and the Undoing of Community Development," (Chicago, IL: Woodstock Institute, 1999).
58. Ibid.

November of 1999 found similar discrepancies at the national level.[59] Similarly, in March of 2000, Chuck Schumer released a report on racial lending patterns in New York City. The study compared lending patterns in six economically comparable black and white New York neighborhoods. It concluded that, as Senator Schumer put it, "as far as lending practices in New York City are concerned, blacks and whites may as well be living on two different planets."[60]

By the early 2000s, the problem of predatory lending had gotten serious enough to warrant the creation of a joint HUD-Treasury anti-predatory lending task force that also investigated racial discrepancies in subprime lending. The task force convened "field forums" in Atlanta, New York City, Chicago, Baltimore and Los Angeles in April and May of 2000.[61] The resulting report on subprime lending in Chicago, *Unequal Burden: Racial and Ethnic Discrepancies in Subprime Lending*, found a high concentration of subprime lending in majority black neighborhoods.[62] It showed that, in 1998, 52% of home refinance loans in majority black neighborhoods had been subprime loans, as compared to 6% in majority white neighborhoods. These discrepancies persisted even if one controlled for income. The report found that 53% of refinance loans in *low-income* black neighborhoods were subprime, as compared to 10% of refinance loans in *low-income* white neighborhoods. It further showed that even "[h]omeowners in high-income black neighborhoods [were] twice as likely as homeowners in low-income white neighborhoods to have subprime loans," and concluded that there were "serious questions and concerns about the impact of subprime lending on low-

---

59. Randall M Scheessele, "1998 HMDA Highlights," in *Housing Finance Working Paper* (Office of Policy Development and Research, HUD, 1999).
60. *Predatory Lending Practices : Hearing before the Committee on Banking and Financial Services*, 106th Cong. 128 (2000). The study is included in the appendix of the hearing.
61. U.S. Department of Housing and Urban Affairs, "Final Report and Recommendations of the Predatory Lending Hud–Treasury Joint Task Force," *Washington, DC: US Department of Housing and Urban Development* (2000).
62. The study defines majority black neighborhoods as neighborhoods were at least 75% of the population is black.

income and minority neighborhoods in our major urban areas."[63] The findings from Atlanta, Los Angeles, Baltimore and New York City told a similar story.[64] Concerns about racial discrepancies in subprime lending—or reverse redlining—were also being voiced in numerous Congressional hearings on predatory lending, such as, for example, a hearing on "Predatory Lending Practices" before the House Committee on Banking and Financial Services on May 24, 2000, or a hearing on "Predatory Mortgage Lending: The Problem, Impact and Responses" on July 26, 2001, before the Senate Committee on Banking, Housing and Urban Affairs.[65] In these and related hearings, racial discrepancies in subprime lending were seldom the primary focus, but they did attract sustained attention.

However, beyond studies that showed that racial discrepancies in subprime lending *existed*, how were racial discrepancies in subprime lending conceptualized, explained, and challenged? Broadly speaking, there were two dominant narratives about racial discrepancies in subprime lending. Representatives from industry trade groups, unsurprisingly, argued that subprime lending provided crucial access to borrowers who would otherwise be denied a loan. The statement of Laura Borelli from the National Home Equity Mortgage Association (NHEMA) before the House Committee on Banking and Financial Services is fairly typical: "Subprime lending," she argued, "is not predatory lending. Subprime loans are made to all Americans who for whatever reason may not qualify for a prime or A credit rating […]. They

63. United States. Department of Housing and Urban Development, "Unequal Burden in Chicago: Income and Racial Disparities in Subprime Lending," (HUD, 2000), 9.
64. U.S. Department of Housing and Urban Development, "Unequal Burden in Atlanta: Income and Racial Disparities in Subprime Lending," (HUD, 2000); "Unequal Burden in Baltimore: Income and Racial Disparities in Subprime Lending," (HUD 2000); "Unequal Burden in Los Angeles: Income and Racial Disparities in Subprime Lending," (HUD 2000); "Unequal Burden in New York: Income and Racial Disparities in Subprime Lending," (HUD 2000). The first hearings on predatory lending dated back to 1993, when consumer protection groups successfully lobbied Congress to pass the Home Owner Equity Protection Act (HOEPA), which was passed in 1994. HOEPA, however, soon proved inadequate to the task of stemming predatory practices in subprime lending, and there was another wave of hearings on predatory lending starting in the early 2000s.
65. *Predatory Lending Practices : Hearing before the Committee on Banking and Financial Services*; *Predatory Mortgage Lending the Problem, Impact, and Responses: Hearing before the Committee on Banking, Housing, and Urban Affairs*, 107th Cong. (2001). Today, the Committee on Banking and Financial Services is called the House Committee on Financial Services.

may have blemishes on their credit from life events such as job loss, medical bills or they may be behind on several mortgage payments. They may not qualify for other reasons, they are new to the job market, are temporarily between jobs, or have no credit history, come from a culture wherein they had not obtained credit before."[66] Extending credit to these borrowers, she argued, amounted to a "democratization of credit."[67] The NHEMA was not the only association that prided itself on having contributed to the "democratization" of credit. In the same hearing, Ralph Rohner, the Special Counsel to the Consumer Bankers Association likewise asserted that "[t]he data on mortgage volumes, including the encouraging figures on loans to minorities and in previously under-served communities, are a source of great pride to the banking industry," and approvingly noted that it "has been called by some the democratization of credit."[68] Similarly, the then-chairman of the Mortgage Bankers Association, Rob Couch, testified before the Committee on Financial Services, "[i]n recent years the mortgage banking industry has greatly expanded its efforts to reach families who traditionally lacked access to credit. Many innovative credit options have made it possible for millions of low- and moderate-income families to build their family's wealth through home ownership. In 2001, for example, minorities accounted for about 32 percent of first-time homebuyers, up from only 19 percent as recently as 1993. The Federal Reserve Board's Governor Gramlich calls this a true democratization of credit."[69] Racial discrepancies in subprime lending were thus either celebrated as indications of the integrative capacities of subprime lending—i.e., as indicative of steps towards higher homeownership rates amongst "minorities"—or were simply denied. While industry representatives commonly admitted that there were some "bad apples," they insisted that subprime lending, by and large, represented

---

66. *Predatory Lending Practices : Hearing before the Committee on Banking and Financial Services*, 82. The NHMA is the principal trade association representing subprime home equity mortgage lenders.
67. Ibid.
68. Ibid., 563.
69. *Protecting Homeowners: Preventing Abusive Lending While Preserving Access to Credit : Hearing before the Subcommittee on Financial Institutions and Consumer Credit*, 108th Cong. 24 (2003).

an efficient market response to a pre-existing risk distribution.

Critics of subprime lending, including consumer protection and fair lending groups, on the other hand, painted a very different picture. Early on, fair lending groups argued that subprime lending often took on a predatory character with highly complex and nontransparent fee and point structures, exorbitant interest rates, pre-payment penalties, and asset-based lending. Fair lending advocates and their political allies insisted that predatory subprime lending exploited existing vulnerabilities and power asymmetries in the market, using "opportunistic pricing," and charged borrowers more than their risk characteristics warranted.[70] Fair lending groups maintained that predatory subprime lenders were targeting communities of color, especially black neighborhoods, and often engaged in lending practices that stripped homeowners of existing equity.[71] In their 2003 report, *Separate and Unequal,* the National Community Reinvestment Coalition, for example, stated that "minorities" were steered toward "high cost loans" despite "qualif[ying] for market rate loans" and that this "result[ed] in equity stripping and has contributed to inequalities in wealth."[72] Others used stronger language. Scott Hashbarger, then-Attorney General of the Commonwealth of Massachusetts, denounced predatory forms of subprime lending as "the worst kind of urban economic violence which blatantly victimized thousands of vulnerable homeowners. These vulnerable homeowners, elderly, people of color, and people in our inner cities, were targeted […] to take out second mortgages with unconscionable terms and conditions."[73]

The controversy over racial discrepancies in subprime lending quickly congealed around the question of whether subprime lending offered a rational and efficient market

---

70. Ibid., 32. statement of Thomas Miller, Attorney General, State of Iowa .
71. Nagazumi et al., "Preying on Neighborhoods: Subprime Mortgage Lending and Chicagoland Foreclosures."
72. National Community Reinvestment Coalition, "The Broken Credit System: Discrimination and Unequal Access to Affordable Loans by Race and Age. Subprime Lending in Ten Large Metropolitan Areas," (Washington, D.C.: NCRC, 2003), 5.
73. *Reverse Redlining; Problems in Home Equite Lending: Hearing before the Committee on Banking, Housing and Urban Affairs*, 103rd Cong. 253 (1993).

response to a segment of risky borrowers—with the implication that the racialized nature of subprime lending was justified or at least unobjectionable—or whether racial discrepancies in subprime lending *exceeded* pre-existing financial risk characteristics, such as income and credit history.[74] Debates revolved around the question whether risk was being measured and attributed fairly according to established standards of risk measurement. Were African American borrowers treated differently than identically situated white borrowers? Could the racialized distribution of subprime lending plausibly be interpreted as an adequate reflection of a pre-existing distribution of financial risk factors? Or did subprime lenders, in an inversion of redlining, steer black borrowers into subprime loans? A virtual flood of NGO and government reports, as well as countless academic articles, rushed to address this question.[75]

In trying to ascertain the correspondence of subprime lending with a 'pre-existing' distribution of financial risk, the disagreements over the nature of the subprime market crystallized around three different aspects: First, whether it was possible to know if racial discrepancies in subprime lending corresponded to a pre-established distribution of underwriting criteria; second, whether market actors were incentivized, willing and competent enough to 'get risk right'; and finally, who, if anybody, had the legitimacy and

---

74. For the former, see, for example, comments by Wayne Abernathy, then Assistant Secretary of the Treasure for Financial Institutions before the Financial Services Committee. United States. Congress. House. Committee on Financial Services. Subcommittee on Financial Institutions and Consumer Credit, *Serving the Underserved: Initiatives to Broaden Access to the Financial Mainstream*, 108-1, June 26 2003, 63. See also Charles Calomiris' (Columbia University) and Anthony Yezer's (George Washington University) testimony before the Financial Services Committee. United States. Congress. House. Committee on Financial Services. Subcommittee on Housing, Community and Opportunity; Subcommittee on Financial Institutions and Consumer Credit, *Subprime Lending Defining the Market and Its Customers*, 108-2, March 30 2004. For the latter, see, for example, George Brown's (Senior Vice President, Self-Help, Coalition for Responsible Lending) testimony before the Financial Services Committee. *Protecting Homeowners: Preventing Abusive Lending While Preserving Access to Credit Subcommittee on Financial Institutions and Consumer Credit.* HUD, "Final Report and Recommendations of the Predatory Lending Hud–Treasury Joint Task Force." ACORN, "Separate and Unequal: Predatory Lending in America."

75. For an example that formulates this question very succinctly, see Bradford, *Risk or Race?: Racial Disparities and the Subprime Refinance Market*. It should here be noted that the vast majority of studies have found a discrepancy in subprime lending that cannot be accounted for wholly in terms of pre-existing differences in financial risk factors.

capability to sanction or challenge the risk assessments made by market actors. These seemingly technical and innocuous questions revealed different conceptions of the pragmatics of risk in the U.S. housing finance market and distinct conceptions of the role of public power in governing these practices.

Supporters of the subprime industry continuously stressed that any outside assessment of racial discrepancies in subprime lending was hampered by the fact that most studies could not control for all relevant risk characteristics.[76] For example, a study funded by the Research Institute for Housing America, the Mortgage Bankers Association's think tank, found unexplained racial discrepancies in subprime lending. But the study explained these discrepancies by noting that "this study suffers from the same problem that many studies examining loan decisions face; it is extremely difficult, if not impossible, to include all the variables that go into a loan decision."[77] Advocates of deregulation concurred. It was difficult, they argued, to know whether any particular loan was an appropriate market response to a pre-existing underwriting characteristic. Such decisions, they claimed, were therefore best left to market participants themselves. Representative Baker (R, Louisiana), for example, argued during a hearing on predatory lending practices in May 2000 that it was virtually impossible to distinguish subprime lending from predatory lending. "It would appear to me," he argued, that "nobody has defined what constitutes 'predatory.' It depends on the individual's own credit history, the value of the asset being acquired and the terms of that loan document. We cannot say that an additional point over traditional current market rates is inappropriate until you know the risk related to the borrower's profile. I think that individuals would much rather have access to the credit and move into their own home as

---

76. *Cf*. Robert Couch's (ABM) testimony before the Financial Services Committee. *Protecting Homeowners: Preventing Abusive Lending While Preserving Access to Credit : Hearing before the Subcommittee on Financial Institutions and Consumer Credit*, 102ff.
77. Anthony Pennington-Cross, Anthony Yezer, and Joseph Nichols, "Credit Risk and Mortgage Lending: Who Uses Subprime and Why?," (Arlington, Virginia: Research Institute for Housing America., 2000).

opposed to continuing to pay outrageous levels of rent in a dilapidated housing project."[78] Any findings of racial discrimination in subprime lending, industry representatives argued, remained vulnerable to the charge of omitted variable bias. Evidence of what fair lending advocates described as "deceptive and even fraudulent lending practices" was labeled "anecdotal."[79] The uncertainty surrounding the status of racial discrepancies in subprime lending was used to justify a hands-off approach, which might have been characterized—particularly during the Bush administration (2001-2009)—by the motto 'when in doubt, trust subprime lenders.'

The uncertainty surrounding racial discrepancies in subprime lending was not accidental, of course. Community activists, fair lending groups, and their allies in Congress had long squared off against industry representatives and their political allies with regard to how much information about the mortgage market should be released publicly.[80] There had been repeated attempts to expand the information collected under the Home Mortgage Disclosure Act (HMDA). During the late 1990s and early 2000s, for example, fair lending groups pushed for mandatory reporting on high-priced loans.[81] When the Federal Reserve reluctantly announced new HMDA disclosure requirements in 2002, the new requirements did not include key information community groups had demanded, such as credit scores, loan-to-value ratios, or debt-to-income ratio. While industry representatives lobbied hard for restricting access to information about lending patterns, they also used the resulting uncertainty about the nature of racial discrepancies in subprime lending in order to challenge

---

78. *Predatory Lending Practices : Hearing before the Committee on Banking and Financial Services*, 32.
79. *Subprime Lending: Defining the Market and Its Customers: Hearing before the Subcommittee on Financial Institutions and Consumer Credit of the Committee on Financial Services, 108th Cong. 272 (2004).* Immergluck, *Credit to the Community : Community Reinvestment and Fair Lending Policy in the United States*, 218.
80. *Credit to the Community : Community Reinvestment and Fair Lending Policy in the United States*.
81. Previously, HMDA data had not included information about whether loans had high interest rates or not. Analyses based on HMDA data, prior to this change, had to rely on a HUD-issued list of subprime lenders to approximate the number of subprime loans. For policy proposals seeking to extend the information collected under HMDA, see, for example, Nagazumi et al., "Preying on Neighborhoods: Subprime Mortgage Lending and Chicagoland Foreclosures."

the notion that racial discrepancies in subprime lending were problematic.

The second point of contention was whether lenders were incentivized, willing, and competent to assess borrowers according to their objective risk characteristics.[82] Early on, an alliance of fair lending groups, including a few critical regulators at the Office of Thrift Supervision (OTS) and the Federal Reserve (such as Ellen Seidman and Ed Gramlich), and members of the House and Senate who either had long-standing political commitments to fair lending policies, such as Representative Maxine Waters, or had been alarmed by the racial discrepancies in subprime lending in the districts they represented, such as Senator Chuck Schumer, warned that subprime lenders were actively targeting majority black neighborhoods. As Gloria Waldron, a member of the Association of Community Organizations for Reform Now (ACORN), put it in a hearing before the Banking and Financial Services Committee "[u]nfortunately, the statistics confirm what is obvious to us. These lenders target our communities."[83]

While industry trade organizations portrayed subprime lending as an extension of the prime mortgage market, fair lending advocates argued that pre-existing market segmentations along racial lines and a changing risk-orientation by lenders due to securitization meant that the subprime lending market functioned in a fundamentally different way than the prime market. Securitization, after all, meant that lenders no longer retained loans on their portfolios. This shifted the emphasis from a careful selection of risks to a maximization of the volume of mortgage originations. In a hearing before the Subcommittee on Financial Institutions and Consumer Credit in 2003, for example, Margot Saunders, from the National Consumer Law Center and the National Association of Consumer Advocates, argued that "we have seen a continual deregulation of credit and a democratization of access to credit which

82. *Cf*. Michael E. Staten's (Credit Research Centre, McDonough School of Business, Georgetown) testimony before the Financial Services Committee *Defining the Market*, 81.
83. *Predatory Lending Practices : Hearing before the Committee on Banking and Financial Services*, 64.

has helped many homeowners to obtain homes, which has been very good. However, we have seen—we who represent low-income consumers actually believe there is too much credit [sic]. […]. *This is a push market* [my emphasis]. […] There is lots of research […] that the securitization of mortgage credit […] has actually created an incentive to originators to fill loan securitization pools, which in turn require these originators to go out and find borrowers for the loans. These loans then are often not really benefiting the consumers, they are more benefiting the originators."[84]

Given pre-existing racial market segmentations that were attributable both to the history of redlining and to the abandonment of "inner city" neighborhoods by mainstream banking services in the 1970s and 1980s,[85] the change in the risk orientation of lenders and the weakened regulatory oversight allowed for the systematic exploitation of the racial segmentation of the mortgage market. This dynamic came close to what Charles Mills has termed "racial exploitation." [86] Mills defines racial exploitation as a form of economic exploitation "in which the moral/ontological/civic status of the subordinate race makes possible the transaction in the first place […] or makes the terms significantly worse than they would have been […]."[87] In this case, it was both the civic status of black Americans and the legacy of sedimented racism in the mortgage market that allowed lenders to price risks according to opportunity rather than on the basis of risk. Fair lending advocates and their political allies argued that this exploitation of market segmentations was far from accidental. For example, Maxine Waters, in her opening statement in the 2003 hearing on "Protecting Homeowners: Preventing Abusive Lending While Preserving Access to Credit" argued that: "Predatory lending involves a number of lending practices that target mostly minority

---

84. *Protecting Homeowners: Preventing Abusive Lending While Preserving Access to Credit : Hearing before the Subcommittee on Financial Institutions and Consumer Credit*, 63.
85. Immergluck, *Credit to the Community : Community Reinvestment and Fair Lending Policy in the United States*.
86. Mills, *Black Rights/White Wrongs: The Critique of Racial Liberalism*, 123.
87. Ibid.

communities, such as high interest rates and fees, unfair pre-payment clauses, frequent refinancing that are not advantageous to consumers, and mandatory arbitration clauses. These lenders are able to engage in predatory activities because credit-starved communities-unfortunately, usually minorities and elderly persons-have little access to traditional sources of credit."[88] Similarly, in a hearing on Predatory Lending Practices in May 2000, William Brennan from the Atlanta Legal Aid Society, argued that: "the financial services industry has created a system of financial apartheid and have done it on purpose. […] People with A credit by and large are treated very well by our financial institutions and banks. People with C and D credit are purposely abused for the sake of exploitation and profits. The sad thing is that there are even some A customers treated as C and D customers are treated. […] They target minority groups because they have historically been cut out of access to credit and these lenders know that."[89]

Members of Congress who were in favor of deregulation as well as the majority of the leadership at OCC, OTS, Fed, FTC, and the FDIC, on the other hand, were less likely to recognize racial discrepancies in subprime lending as problematic insofar as they saw the subprime lending market as an extension of traditional lending. Almost all conceded that there was the occasional bad apple, but few considered (or wanted to consider) that structural factors had changed the risk orientation of all subprime lenders.[90] Discrepancies between assumptions about the risk orientation of the industry (risk-based origination: lenders are interested in pricing risk adequately because they retain the risk throughout the length of the mortgage) and the actual orientation of the industry (volume-based origination: lenders,

---

88. *Protecting Homeowners: Preventing Abusive Lending While Preserving Access to Credit : Hearing before the Subcommittee on Financial Institutions and Consumer Credit*, 16.
89. *Predatory Lending Practices : Hearing before the Committee on Banking and Financial Services*, 58.
90. For a critique of the "bad apple" defense, see Prof. Kurt Eggert's and Thomas Miller's (Attorney General, Iowa) testimony before the Financial Services Committee *Protecting Homeowners: Preventing Abusive Lending While Preserving Access to Credit : Hearing before the Subcommittee on Financial Institutions and Consumer Credit*, 31ff, 64ff.

especially thinly capitalized Independent Mortgage Companies, are driven by the demand for profitable high-risk mortgage-backed securities on the secondary market, and face incentives to provide a high volume of high-risk mortgages) made the recognition of the problematic nature of the racial discrepancy in subprime lending less likely.

The third point of contention was the extent to which democratic representatives or regulators could question and regulate the risk assessments made by subprime lenders. The notion that racial discrepancies in subprime lending were problematic was undermined by a very restrictive view of the ability and legitimacy of GSEs and Congress to second-guess the risk assessments made by subprime lenders. This skeptical view of Congress' ability to meaningfully oversee risk-making practices in the subprime sector became particularly dominant during the years of the Bush administration when every debate about predatory subprime lending was marked by anxieties that any intervention in the market might diminish access to credit. Therefore, while the legitimacy of Congress to second-guess the risk assessments made by subprime lenders was routinely called into question, high confidence in the legitimacy and competence of market actors' risk assessments undermined the notion that racial discrepancies in subprime lending were problematic.[91]

Fair housing activists sought to question this restrictive vision of regulatory power in the housing market. Where supporters of the subprime lending expansion saw efficient lending patterns, they saw a housing market segmented along lines of race, in which the new orientation of subprime lenders would lead to concentrated market power and allow for exploitative practices. Idealized conceptions of the pragmatics of risk in the subprime market, they argued, were dangerous because they served to legitimize and protect spaces of racial exploitation. Where advocates of financial deregulation expected lenders disciplined by

---

91. See statement by Rep. C. Shays *Review of the Voluntary Agreement by Fannie Mae and Freddie Mac : Hearing before the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises of the Committee on Financial Services*, U.S. House of Representatives. 36 (2001).

competition, they argued that the lack of access to credit that black neighborhoods had long experienced gave subprime lenders an unprecedented market power. In many ways, they challenged a fetishized notion of financial risk measurements as an objective, neutral, and a-historical measure of borrower default and instead stressed the ways in which regulators and legislators had to actively intervene in risk-making practices in order to ensure that people were treated in accordance with their objective creditworthiness.

In other words, this is not simply a story of two opposing conceptions of the pragmatics of risk and race in the subprime market. Despite the fact that oppositional discourses troubled the notion that the existing lending market was efficient—i.e., that it treated people according to their creditworthiness—many fair housing advocates nonetheless evoked treatment according to one's creditworthiness as the standard that needed to be met in order to ensure fairness. For example, in an early report on racial discrepancies in subprime lending, the National Community Reinvestment Coalition called on lenders to adopt "risk-based, not race-based pricing."[92] Or consider a much more recent NAACP guide for fair lending. The very first principle of the fair lending guide states that: "Loan terms will not be determined by a borrower's race, ethnicity, gender, national origin, sexual orientation, language preference, disability, religion/creed, or age, except as otherwise permitted or required by law. […] Similarly situated borrowers (i.e., borrowers with similar underwriting characteristics, including credit scores, debt ratios, loan-to-value ratios, etc.) will receive comparable loan terms on identical or comparable loan products."[93]

Notwithstanding substantive disagreements, the structure of the debate elevated the existing distribution of financial risk characteristics to a *standard of fairness*. The debate was not about whether being treated in accordance with one's risk characteristics constituted an

---

92. National Community Reinvestment Coalition, "The Broken Credit System: Discrimination and Unequal Access to Affordable Loans by Race and Age. Subprime Lending in Ten Large Metropolitan Areas," 17.
93. Monique W. Morris, "Countering Discrimination and Mortgage Lending in America: An NAACP Guide for Fair Lending," (NAACP, 2010), 3.

adequate normative principle, but rather what tools were necessary in order to realize this vision of actuarial justice. This discursive formation endorsed an actuarial conception of justice in risk commodification as the basis for evaluating claims of racial injustice. As the title of one congressional committee hearing on subprime lending put it, the imperative was to get borrowers "the credit they deserved."[94] The "credit they deserved," however, was the credit they "deserved" according to their underwriting characteristics.

The debate thereafter focused on whether the organization of the housing finance market allowed lenders to deviate from risk-based mortgage pricing. The anti-predatory lending coalition troubled the notion that existing risk assessment practices of financial institutions reflected the pre-existing distributions of creditworthiness. This critique nonetheless accepted 'objective' creditworthiness as the basis on which to evaluate the commodification of risks and futures. This focus pre-determined which aspects of the race/risk nexus would be critiqued and contested, i.e., which aspects would be seen as normatively troubling and in need of transformation. It focused public attention on so-called "independent race effects"—i.e., those aspects of racial discrepancies in subprime lending that could not be attributed to any pre-existing discrepancies in underwriting characteristics—and thereby displaced debates about how such pre-existing discrepancies in underwriting characteristics came to exist in the first place. The racial dimensions of predatory lending consequently appeared as the continuation of a long history of treating prospective borrowers arbitrarily on the basis of race rather than according to objective economic criteria.

This is not to suggest that bias and direct discrimination, or, indeed, the exploitation of the racial segmentation of the mortgage market, are insignificant aspects of the race/risk nexus. Fair housing activists were right to stress the ways in which the racial hyper-

94. *Helping Consumers Obtain the Credit They Deserve : Hearing before the Subcommittee on Financial Institutions and Consumer Credit of the Committee on Financial Services*, 109th Congress. (2005).

segmentation of the housing market had led to the exploitation of vulnerabilities and power asymmetries; and they did present a historical account of the role that race had played in creating those power asymmetries. The story about racial discrepancies in subprime lending is, in part, a story about "banking on race," in the sense that lenders exploited the insufficient oversight and the lax market discipline that resulted from a mix of deregulation and the racial history of the housing market.

However, an exclusive focus on *this* aspect of the race/risk nexus—i.e., on the racialization of risk-making practices in the sense of a deviation from objective creditworthiness—threatens to mistake a facet of the problem for its entirety, in a kind of synecdochic confusion that muddies the political waters. Insofar as the debate focused its normative condemnation on those instances in which race and risk could be neatly separated, it displaced more ambitious visions of what "fair lending" could and should mean in a market—and in a society—so deeply structured by a history of racial injustice. This displacement had two aspects: First, a focus on "independent race effects" and appeals to objective standards of creditworthiness and risk displaced key normative questions about the fairness of actuarial justice by construing the articulation of race and risk in a narrow way. Second, appeals to actuarial justice also constituted an abdication of democratic control over practices of valuation. This abdication of democratic control not only surrendered the ability to govern market valuations but negated it; and in doing so, it abrogated the collective responsibility to address past racial injustice and to abolish the devaluation of blackness and the valorization of whiteness. In the following, I will address these two aspects in turn.

Racing Risk

In the debates about racial discrepancies in subprime lending, we have encountered two ways

of construing the race/risk nexus so far. First, there is a conception of discrimination as treating prospective borrowers on the basis of race, rather than risk, without economic rhyme or reason. Second, there is another conceptualization of the racialization of risk-making practices, in which race functions, accurately, as a proxy for vulnerability. This has been attributed to a number of different factors, but the most sophisticated accounts have generally made the argument that this vulnerability stems, at least in part, from the lack of access to mainstream sources of credit, while noting that this lack of access is itself a product of past racial practices in the housing finance market. The second conceptualization of the race/risk nexus does not rely on a construal of discrimination as antithetical to economic reason but instead portrays the race/risk nexus as a corruption of economic rationality that occurs not solely at the level of racial beliefs, but also at the level of market structure. Nonetheless, the racialization of risk-making practices is here presented as the outcome of a distorted economic logic that, with the right kinds of interventions, can be corrected so as to enforce mortgage pricing on the basis of risk, not race. In other words, with the correct kind of regulatory oversight, the market structure can be amended so as to generate valuation practices that more accurately reflect pre-existing social regularities. Both ways of conceptualizing and problematizing the racialization of risk mobilize an underlying commitment to actuarial justice; they accept that risk-based pricing is an appropriate evaluative standard; and, in many cases, praise it as a laudable goal. This is exemplified in the constant invocation of the integrative powers of the subprime market by critics and supporters of the expansion of the subprime mortgage lending market alike – the ubiquitous assertion that subprime lending had helped "low-income and minority" borrowers climb the property ladder.

But the phrase "low-income and minority" should have given everyone pause. It implied that being a "minority" borrower (i.e., African American or Latinx) was somehow

correlated with the financial risk one represented in ways that mirrored other economic characteristics, such as being "low-income." After all, as long as one maintained that race, either at the borrower or at the neighborhood level, was entirely irrelevant to lending decisions, it was unclear why the refrain of financial inclusion consistently invoked "low-income *and* minority borrowers." If, on the other hand, racial discrepancies in subprime lending simply reflected the fact that "minority" borrowers had previously not had access to credit (without the assumption that a systematic relationship between risk and race existed), then it is unclear why financial inclusion through higher-priced loan products should ever have been deemed anything but an exploitative practice. However, there is a third option here: namely, that the phrase (also) expressed a vague sense that there really was an association between race and risk, either at the borrower or at the neighborhood level. Initially, this may seem entirely counter-intuitive. But it is maybe not as far-fetched as one might initially assume, given reasons both internal and external to the housing finance market. For example, it would not be surprising if, at the neighborhood level, the history of racial practices in the housing finance market, the pervasive practice of redlining, and the abandonment of black neighborhoods by mainstream banks had changed the default risk associated with lending in such neighborhoods. Indeed, there is some economic research that suggests this may be the case.[95] Similarly, at the borrower level, it is not implausible to assume that pervasive racist practices both in the housing finance market and in other markets, such as the labor market, could make racialized financial subjects riskier.[96] This is an aspect of the race/risk nexus (and I want to be clear that it is just *one* aspect of the racialization of risk) that is seldom acknowledged, even as a possibility.

95. Gary A. Dymski, "The Theory of Credit-Market Redlining and Discrimination: An Exploration," *Review of Black Political Economy* 23, no. 3 (1995); "Discrimination in the Credit and Housing Markets: Findings and Challenges," *Handbook on the Economics of Discrimination* 215 (2005): 5-9.
96. Margert Austin Turner, Michael Fix, and Raymond J. Struyk, "Opportunities Denied, Opportunities Diminished," in *Urban Institute Report 91-1* (Washington D.C.1991).

This, I suggest, is because many of the widely accepted and/or institutionalized normative and legal tools against the racialization of risk seem to depend, for their validity, on our ability to neatly separate race and risk; to identify those instances in which somebody is treated arbitrarily *solely* on the basis of race. A commitment to actuarial justice does just that—it cements the idea that if people are treated on the basis of objective underwriting criteria, financial practices are racially fair. Consequently, the problem is continuously shoehorned into a recognizable form. But this leaves one without the normative or conceptual resources to tackle instances in which race, as a category of differential political and economic empowerment, might itself constitute an objective underwriting characteristic, so to speak. This does not, of course, endorse the use of race as a proxy for risk in underwriting practices. Instead, acknowledging this aspect of the race/risk nexus can be an important step towards formulating a more ambitious vision of racial economic justice in financial markets. If it were acknowledged, after all, it would point squarely to the role that past and present racial injustice has played in bringing about the existing distribution of creditworthiness. This would raise a previously displaced normative question: If the objective distribution of risk characteristics is itself racialized due to past racial injustice, then why should those that have been disadvantaged most by these societal processes bear the cost of a history of sedimented racism? It would require a more expansive vision of what "fair lending" should mean that would have to include meaningful remedies for the way in which racial injustice has shaped the present distribution of financial risk. It would necessitate using valuation practices as a way to change social regularities by collectivizing the present financial costs of past racial injustice, rather than merely seeking to correct valuation practices in accordance with pre-existing social regularities.

Conclusion

Today, the ability to issue authoritative assessments of financial risk has become central to

governing the creation and distribution of value, but the pragmatics of financial risk take place against an unacknowledged background of sedimented racial injustice. This injustice is obscured by the hegemonic actuarial conception of justice in risk commodification, which stresses individual responsibility for the risk one 'represents.' As long as one adheres to a conception of risk as a-historical and objective or to an actuarial standard of fairness in risk commodification, it is difficult to contest the constitutive processes of risk explicitly. This chapter has sought to question the construction of financial risk as an object of technocratic management and return a sense of the possibilities of democratic control to the debate. I have argued that the way in which we make the future tractable and amenable to purposive action is not only a matter of better models or bigger data but also a form of social power.

In the run-up to the subprime crisis, I have argued, the vision of what constituted fair risk-making practices became increasingly narrow. The framing of the debate, which focused on whether racial discrepancies in subprime lending "merely" reflected a pre-existing distribution of risk and creditworthiness or were the result of predatory practices that exploited pre-existing economic vulnerabilities, displaced a critical evaluation of the fairness of addressing the legacy of past racial practices in the housing finance market through the privatization of financial risk. The imperative to treat people according to their risk, in other words, increasingly displaced debates about how the present distribution of risk and creditworthiness had come about; and consequently, displaced an awareness for the role that the racial practices of the real estate industry had played in bringing about the present distribution of creditworthiness.

This injunction to treat people in accordance with their risk, not race, is rhetorically powerful because it fits so well into a hegemonic understanding of the grammar of racial injustice and accords with a widely accepted conception of creditworthiness and risk as pre-political facts. I have here sought to argue that valuation—including the valuation of

economic futures—is by no means pre-political, but instead a site of continuous political contestation. In the run-up to the subprime crisis, the political contestation over risk-making practices, however, was hampered by a narrow vision of what democratic control over risk-making practices could and should be. It surrendered the ambition to construct creditworthiness and, instead, became a mere enforcer of the 'rule of the market.'

Chapter 3: Beyond Discrimination: Racial Economic Injustice and the Rule of the Market

Introduction

In the previous two chapters, I have examined how the race/risk nexus has been conceptualized and contested in the context of financial institutions. In both case studies, I have shown that racially unjust predictive practices were predominantly conceptualized as deviations from the principle "to each according to their risk." Conceptualizing racial (in)justice in terms of actuarial justice, I have argued, falls short of addressing the racialized distribution of risk and creditworthiness. Thus, it runs the risk of "accepting substantial inequality as a neutral baseline," as Cheryl Harris has put it.[1]

In this chapter, I draw out the theoretical implications of my historical case studies and put them into conversation with contemporary debates about racial justice in political theory. I argue that contesting racially unjust predictive practices by invoking a principle of formally equal treatment reduces the problem of racial economic injustice in financial markets to a problem of racial discrimination, understood narrowly as disparate treatment given equal conditions. While discrimination is an important component of any analysis of racial injustice in financial markets, the exclusive focus on discrimination prevents us from producing an adequate description of and normative response to the way in which race structures outcomes in financial markets.

I propose that analyses of racial economic injustice in financial markets should instead foreground the concept of *institutional racism*. Drawing on Kwame Ture and Charles

---

1. Harris, "Whiteness as Property," 1753.

Hamilton's classic formulation, I develop an expansive account of institutional racism as the operation of institutional rules and logics that *reproduce* and *privatize* the burdens of past and present racial injustice and maintain the systematic disadvantage and subordination of racialized groups.[2] Re-conceptualizing racial injustice in financial markets through the lens of institutional racism, I argue, focuses our attention on the core issue: namely, on resisting the privatization of the financial burdens of past and present racial injustice.

My critique of actuarial justice both resonates with and challenges liberal accounts of racial economic justice that foreground issues of historical injustice and institutional racism, such as Charles Mills' and Tommie Shelby's respective accounts of racial economic justice. Insofar as it critiques a narrow understanding of racial discrimination as an insufficient framework for thinking about racial economic injustice, my critique of actuarial justice resonates with existing accounts of institutional racism. However, I also challenge existing accounts of institutional racism by arguing that we cannot understand the entrenchment of institutional racism without analyzing how it relates to core institutional features of capitalist markets, specifically (1) the profit motive and (2) the private nature of practices of valuation.

I propose that historical attempts to contest racially unjust predictive practices in financial markets—*in virtue* of their partial successes, ambivalences, and shortcomings—highlight something that contemporary liberal debates about racial justice have largely neglected: namely, that the for-profit and private nature of practices of valuation reproduces and obscures the economic effects of past racial injustice and the valorization of whiteness.

---

2. As I specify in the introduction to this dissertation, I here focus on racial economic injustice as it pertains to black Americans. This does not mean that I think there are no other forms of racial economic injustice. However, I, like many other scholars, think that the particular history of black Americans in the U.S. is distinctive enough from that of other racialized groups to warrant its own treatment. Andrew Valls has put this well in his recent *Rethinking Racial Justice*: "While African Americans are not the only racial minority in American society, they constitute a very large and disadvantaged social group with a distinctive history and distinctive set of current conditions. This history and present-day reality, I argue, give rise to distinctive normative claims that cannot necessarily be made with equal force or plausibility by other groups. So despite the fact that there are other racialized groups, and other disadvantaged minorities, the issues related to African Americans deserve sustained attention in their own right." Andrew Valls, *Rethinking Racial Justice* (New York, NY: Oxford University Press, 2018), 9.

This depoliticizes the active reproduction of racial economic injustice and shields it from demands for justification. The imperative of profitability and the private nature of practices of valuation produce a tendency to see the continuous reproduction of the rule of race as an apolitical and quasi-natural outcome.

This does not mean, of course, that risk assessment and valuation practices can never be subjected to demands for justification in a capitalist social order. As I have pointed out in previous chapters, the ambivalences of anti-discrimination legislation and the partial politicization of risk-making practices are examples of such demands for justification, even if they do not go far enough. I argue that we should draw on these ambivalences to reconceptualize practices of valuation—and economic value itself—as sites of political contestation. In other words, I propose that we should take the partial politicization of valuation and risk-making practices as a starting point for contesting both the profit motive and the private nature of valuation. This would mean that risks are, at least partially socialized, that the logic of profitability, including the mode of commodification of risks, is transformed, and that the profit motive is tempered. Taking the partial politicization of risk-making practices as a starting point, however, also means articulating standards of justification for practices of valuation and risk assessment that exceed the mere idea of formal fairness and instead appeal to a more substantive conception of racial justice as a set of economic policies that actively redistribute the financial costs of an unjust past and present, and decisively counteract the valorization of whiteness and the devaluation of blackness. The failure to do so, I argue, constitutes a political relationship to the core institutional features of markets that can be understood as the 'rule of the market.'

I end this chapter by suggesting that this means, as W.E.B. Du Bois argued, that demands for racial justice require expanded democratic control over the economy.[3] In other

---

3. Du Bois makes this argument both negatively—i.e., by showing how white labor's support for white

words, expansive demands for racial justice necessarily make the economy an object of democratic governance. Rather than containing this aspect of struggles for racial economic justice by restricting the scope of democratic intervention to an equal application of the rules of private property, I argue that it should be embraced and extended.

This chapter will be structured as follows: first, I formalize my argument about the shortcomings of actuarial justice as a paradigm in which to make claims for racial justice in financial markets. Here, I argue that actuarial justice disavows collective responsibility for the effects of past and present wrongs, and effectively privatizes the costs of these wrongs. Second, I turn to debates about institutional racism to develop an expansive account of institutional racism as the active reproduction of past racial injustice through the operation of institutional rules and logics. I argue that such an account of institutional racism can help us shift the focus from the question of whether individuals are treated in accordance with their risk profile to the question of how the normal operations of market-based risk assessment and valuation practices privatize the economic burdens of past and present injustice that arise from the systematic devaluation of blackness.

Third, I argue that an account of institutional racism can contribute to a re-conceptualization of racial economic injustice in financial markets, but that such an account remains incomplete unless it examines how the reproduction of racial economic injustice is articulated with core institutional features of capitalist markets. I engage with Charles Mills to demonstrate that even his differentiated and expansive account of the economic aspects of racism and white supremacy does not offer us an account of how core institutional features of capitalist markets shape and complicate political struggles against the economic aspects of

supremacy supports the "domination by wealth," as he puts it, and positively, by arguing that "industrial democracy" can only be achieved when there is an organized effort to extend control over both production and consumption. See, for example, W. E. B. Du Bois, *Worlds of Color* (New York, NY: Council on Foreign Relations, 1925); "The Position of the Negro in the American Social Order: Where Do We Go from Here?," *The Journal of Negro Education* 8, no. 3 (1939); "Prospect of a World without Race Conflict," *American Journal of Sociology* 49, no. 5 (1944).

institutional racism.

Finally, I offer a first sketch of the way in which two core institutional features of financial markets—the private nature of valuation and the profit motive—complicate attempts to challenge the reproduction of race-based economic disadvantage and the privatization of the burdens of an unjust past and present. Considering how core features of the institutional structure of financial markets are implicated in shielding race-based economic disadvantage from demands for justification points us towards seeing demands for addressing race-based economic disadvantage as a struggle to extend democratic control over core economic institutions and processes, including the profit motive and the private nature of valuation.

Critique of Actuarial Justice

In the two historical case studies that precede this chapter, I have analyzed how racial (in)justice has been conceptualized with regard to financial markets and financial institutions. As I have shown, dominant conceptions of racial justice in financial markets often invoke the idea that financial markets and institutions are just if everybody is treated in accordance with their risk profile and creditworthiness, rather than on the basis of race. Dominant conceptions of racially just predictive practices in financial markets, in other words, invoke the normative principle "to each according to their risk." I have argued that actuarial justice not only informs contemporary public policy debates about racial justice but has also been influential in shaping oppositional anti-racist conceptions and contestations of racially unjust predictive practices.

The problem of racial economic injustice in financial markets, if seen through the lens of actuarial justice, appears as a problem of discrimination, where discrimination is understood as wrongful and disadvantageous treatment of equally situated persons on the

basis of ascriptive racial identities. Discrimination is conceptualized as a violation of the principle of "to each according to their risk," and contested by insisting on an "objective" assessment of risk or creditworthiness, irrespective of race. The implicit (or explicit) assumption is that race—be it the ascriptive racial identity of an individual or the racial make-up of a neighborhood—is irrelevant for risk assessments. Consequently, the issue is portrayed as the corruption of economic reason by racial bias.

As I have argued in "To Each According To Their Risk" and "The Credit They Deserve," the trouble with problematizing racial economic injustice in financial markets in this way is that it is not at all clear that race is not correlated with financial risk. Obviously, this is not due to any inherent characteristics of racialized people or places. Instead, it is due to what I have called the rule of race—i.e., the fact that race reliably structures life chances and economic outcomes. As I have argued earlier, race can be understood as a 'rule' in the sense of regularity, i.e., a rule that reliably structures the 'game' of social life and can thus be anticipated by all players. The regularity with which race structures economic outcomes is due, in large part, to past racial injustice and the pervasive valorization of whiteness.[4] In other words: if economic outcomes are structured by race and whiteness does have an economic value, it is likely that this will be reflected in predictions of the risks and future value of an investment.[5]

Conceptualizing the problem of racial economic injustice in financial markets primarily as one of racial bias corrupting economic reason therefore only tells part of the story: It is true that the valuation practices of lending institutions are often corrupted by irrational racial

---

4. Although her conceptual language and theoretical framework depart from mine, I would argue that Keeanga Yamattha Taylor's brilliant *The Race for Profit* can be read in this vein—i.e., as an example of the way in which the valuation of whiteness comes to structure investment decisions. Explicitly, however, she focuses on how valuation practices in the real estate industry depart from objective risk assessments rather than portraying them as reflections of the pervasive valuation of whiteness. See Taylor, *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership*.
5. Cf. p. 11 n27.

prejudice—be it in the form of individual judgments, institutional processes or formalized risk assessment techniques—but they *also* reflect the ways in which the distribution of risk and value is itself structured along the lines of race due to past racial injustice, the valorization of whiteness, and the pervasive devaluation of black spaces and black people. The problem here is not economic rationality simpliciter but a historically specific form of economic rationality that valorizes whiteness.

At best, appealing to precepts of actuarial justice in order to conceptualize or contest racial economic justice in financial markets narrows our conception of the race/risk nexus; at worst, it misleads us about what kind of problem we are facing. Given that historically embedded structural injustice and contemporary valuations of whiteness have produced and continue to produce a racialized distribution of risk and creditworthiness, a primary focus on treating people according to their risk and creditworthiness effectively legitimizes the privatizations of the burdens of an unjust past. If, however, the racialized distribution of risk and creditworthiness is foregrounded, the predictive practices in financial markets not only appear normatively troubling when they deviate from the principle "to each according to their risk," but also when they "merely" reproduce the effects of past racial injustice and reflect the present valuation of whiteness. Consequently, I argue that even when market-based, for-profit predictive practices adhere to the standard of 'to each according to their risk,' they are implicated in maintaining a form of structural racism by privatizing the burdens of an unjust past and present.

Institutional Racism

So far, I have presented a critique of actuarial justice. But how does such a critique connect to broader conceptualizations of racial economic injustice? There are three ways in which we commonly conceptualize and condemn the ways in which race structures economic

outcomes: racial discrimination, historical injustice, and institutional racism. Of course, it is not quite that straightforward: Racial discrimination has spawned a complicated normative grammar that distinguishes between direct and indirect, individual, institutional, and structural discrimination. But much of the philosophical discussion of this normative grammar is indebted, it seems to me, to the foothold that discrimination gained in U.S. American jurisprudence and political discourse as a legal and moral concept. Today, discrimination is the dominant language in which we talk about racism and racial injustice in the U.S. Given that discrimination, as a concept, is so firmly established in the U.S. American political imaginary, and that its normative charge is so unambiguous, a strategy of conceptual expansion seems attractive.[6] Politically, it is an open question whether one should pursue this strategy. The answer to this question depends on one's judgment of the likelihood of achieving widespread structural transformations by mobilizing an expanded legal and/or moral conception of discrimination. I, for one, am not particularly hopeful about building on the language of discrimination in order to conceptualize and contest forms of racial economic injustice that do not fit the paradigm of formally equal treatment, and so I will not be using the language of direct and indirect discrimination here.

To return to my original point: There are three familiar conceptualizations of the ways in which race structures the economy: racial discrimination, historical injustice, and institutional racism. In the following, I will argue that our accounts of racial economic injustice in financial markets should center institutional racism. I should note, however, that I do not

6. There are, of course, a number of scholars who have argued against a moralized conception of discrimination—i.e., against the notion that all forms of discrimination are inherently morally wrong. I find Iris Marion Young's and Tommie Shelby's and accounts particularly helpful here. Iris Marion Young, *Justice and the Politics of Difference* (Princeton, N.J.: Princeton University Press, 2011). and Tommie Shelby, *Dark Ghettos: Injustice, Dissent, and Reform* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2016). But I also agree with David Wasserman that the moralized conception of discrimination is the one that's dominant in contemporary U.S. American political discourse. "To claim that someone discriminates is to subject her to reproach or challenge her for justification; to call discrimination "wrongful" is merely to add emphasis to a morally laden term." David Wasserman, "The Concept of Discrimination," in *Encyclopedia of Applied Ethics*, ed. Ruth Chadwick (Academic Press, 1998), 805.

intend to advance institutional racism as the sole concept for explaining the ways in which race continues to structure financial markets. I concur with scholars such as Charles Mills that one of the most important tasks for descriptive *and* normative accounts of the nature of anti-black racism in the U.S. is to describe "black economic disadvantage" and white economic advantage in its full complexity.[7] It would therefore be counterproductive to seek to subsume all aspects of racial economic injustice under a single concept.

So why foreground institutional racism? Why not focus on historical injustice, for example? Aren't many, if not most, of the current racial economic inequalities—in income, access to credit, wealth, etc.—due to past racial injustice? I will here draw on Kwame Ture and Charles V. Hamilton's classic formulation of 'institutional racism' in order to argue that there is much to be gained from focusing our attention on the ways in which past racial injustice *and* the ongoing devaluation of blackness *produce* racial economic inequalities; and that we ought to understand the (re-)production of racial economic injustice as something active, rather than as a past action that reproduces itself, as if without an author. Ture and Hamilton, I argue, sought to capture the ways in which racism—as a system of white advantage and power—is *actively* (re-)produced while any sense of responsibility and any attribution of agency is eschewed.[8] Ture and Hamilton's concept of institutional racism is thus more generative than competing conceptions of institutional racism.[9]

---

7. Charles W. Mills, "White Supremacy and Racial Justice, Here and Now," in *Social and Political Philosophy*, ed. James P. Sterba (London: Routledge, 2001), 330.
8. This attempt to capture how racism as a system of white advantage and power evades normative scrutiny and agentive responsibility also resonates with contemporary critiques of "reactionary colorblindness" (Ian Haney-López), "colorblind racism" (Eduardo Bonilla-Silva), and "laissez-faire racism" (Lawrence Bobo). Despite their differences, these terms all seek to conceptualize and critique attempts to reject collective responsibility for an unjust past and present. See Ian Haney-López, "A Nation of Minorities: Race, Ethnicity, and Reactionary Colorblindness," *Stanford Law Review* 59, no. 4 (2006); Lawrence Bobo, Ryan Smith, and James Kluegel, "Laissez-Faire Racism: The Crystallization of a Kinder, Gentler, Antiblack Ideology," in *Racial Attitudes in the 1990s : Continuity and Change*, ed. Steven Jack K. Martin, A. Tuch (Westport, Conn.: Praeger, 1997); Eduardo Bonilla-Silva, *Racism without Racists Color-Blind Racism and the Persistence of Racial Inequality in America*, 4th ed. (Lanham, Md.: Rowman & Littlefield, 2014).
9. A disclaimer about my use of the term 'institutional racism:' While I am committed to the *concept* of institutional racism as defined here, I am not particularly attached to institutional racism as a *term*. I use it primarily because it is one of the earliest concepts in anti-racist struggles in the post-civil rights era that explicitly sought to move towards a systemic understanding of racism. There are many other contenders—

In *Black Power*, Ture and Hamilton articulate and popularize the concept of institutional racism.[10] While *Black Power* did not pioneer a structural account of racism, it revived debates about racism as a political and economic system rather than a matter of individual attitudes.[11] Ture and Hamilton define racism as the "predication of decisions and policies on considerations of race for the purpose of subordinating a racial group and maintaining control over that group,"[12] but argue that there is a distinction to be made between "individual racism" and "institutional racism." It is worth quoting them at some length here:

> "Racism is both overt and covert. It takes two, closely related forms: individual whites acting against individual blacks, and acts by the total white community against the black community. We call these individual racism and institutional racism. The first consists of *overt acts by individuals* [my emphasis], which cause death, injury or violent destruction of property. This type can be recorded by television cameras; it can frequently be observed in the process of commission. The second type is *less overt, far more subtle, less identifiable in terms of specific individuals* [my emphasis] committing the acts. But it is no less destructive of human life. The second type originates in the operation of established and

structural racism, systemic racism, and, of course, white supremacy. Structural and systemic racism could both be defined in the way I use institutional racism here. Tommie Shelby's definition of structural racism as accumulated disadvantage caused by past racial injustice, for example, is similar to my definition of institutional racism. The difference between Shelby's use of structural racism and my use of institutional racism, however, is that I foreground the operation of rules and logics that (re)produce the disadvantages of past injustice and characterize them as an active refusal to collectively bear the costs of an unjust past and present. See Shelby, *Dark Ghettos: Injustice, Dissent, and Reform*. Charles Mills has also, very convincingly, argued that we should use the term 'white supremacy' in order to indicate a system of white advantage and power. Racism, according to Mills, is too closely associated with individual attitudes and beliefs. I conceive of white supremacy as an overarching term that encompasses multiple ways of creating and sustaining racial stratification, of which institutional racism is one. Mills, "White Supremacy and Racial Justice, Here and Now," 325.

10. Taylor, *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership*, 20. See also, Lawrence A. Blum, *I'm Not a Racist, but-- ; the Moral Quandary of Race* (Ithaca, NY: Cornell University Press, 2002), 186 n73. and Ibram X. Kendi, *How to Be an Antiracist* (New York: One World, 2019), 384.

11. Ture and Hamilton contributed to a shift in the understanding of racism as structural rather than a question of individual attitudes. As U.S. historians of the interwar and postwar period have argued, during the postwar period, structural understandings of racism were increasingly eclipsed by a reconceptualization of racism as a problem of individual attitudes. Penny von Eschen, for example, has argued that the critical analysis of racism as a politico-economic system rooted in the history of enslavement and racial oppression that was common in African American political circles in the 1920s and 1930s was later displaced by psychological and socio-psychological research on "race relations." The race relations framework portrayed racism as "a disease," and a "psychological problem characteristic of a backward people." See Penny M. Von Eschen, *Race against Empire: Black Americans and Anticolonialism, 1937-1957* (Ithaca, NY: Cornell University Press, 1997), 155. For similar arguments, see also Leah N. Gordon, *From Power to Prejudice: The Rise of Racial Individualism in Midcentury America* (Chicago: The University of Chicago Press, 2015); Walter A. Jackson, *Gunnar Myrdal and America's Conscience: Social Engineering and Racial Liberalism, 1938-1987*, Fred W. Morrison Series in Southern Studies. (Chapel Hill: University of North Carolina Press, 1990). Ture and Hamilton's structural understanding of racism therefore revived an earlier tradition in black political thought.

12. Kwame Ture and Charles V. Hamilton, *Black Power: The Politics of Liberation in America: With New Afterwords by the Authors* (Vintage Books, 1992), 3.

> respected forces of society, and thus receives far less attention than the first type. When white terrorists bomb a black church and kill five black children, that is an act of individual racism, widely deplored by most segments of the society. But when in that same city – Birmingham, Alabama – five hundred black babies die each year because of the lack of power, food, shelter and medical facilities, and thousands more are destroyed and maimed physically, emotionally and intellectually because of conditions of poverty and discrimination in the black community, that is a function of institutional racism. When a black family moves into a home in a white neighborhood and is stoned, burned or routed out, they are victims of an overt act of individual racism which most people will condemn. But it is institutional racism that keeps black people locked in dilapidated slum tenements, subject to the daily prey of exploitative slumlords, merchants, loan sharks and discriminatory real estate agents. The society either pretends it does not know of this latter situation, or is in fact incapable of doing anything meaningful about it."[13]

Ture and Hamilton's concept of institutional racism introduces two critical distinctions between individual and institutional racism that pertain to the type of actor and action, respectively. First, with regard to the actor, Ture and Hamilton introduce the distinction between an individual perpetrator of racist acts, on the one hand, and forms of racism that cannot be traced to a single, identifiable individual, on the other. Second, with regard to the type of action, Ture and Hamilton distinguish between overt acts that are explicitly motivated by racial prejudice, on the one hand, and a status quo that subordinates black Americans and confers economic advantages on the basis of race, on the other. Ture and Hamilton specify that support for institutionally racist regimes need not be motivated by explicit and reflexively endorsed racist attitudes and beliefs: "This is not to say," they point out, "that every single white American consciously oppresses black people. He [sic] does not need to. Institutional racism has been maintained deliberately by the power structure and through indifference, inertia and lack [of] courage on the part of white masses as well as petty officials."[14]

These two distinctions have been widely taken up to trouble the policies, institutions,

13. Ibid., 4.
14. Ibid., 22.

and structures that reproduce race-based subordination and disadvantage but exceed the framework of individual racism understood as disparate and disadvantageous treatment on the basis of race. Related distinctions have also informed philosophical debates about the wrongness of direct and indirect racial discrimination as well as legal scholarship on disparate treatment and disparate impact.

In contemporary debates, there are two main competing understandings of institutional racism: First, institutional racism is commonly defined as institutional practices that are *not* motivated by racial bias or prejudice, but nonetheless impose disproportionately negative effects on racially subordinated groups. For example, Gertrude Ezorsky, in an influential account, defines institutional racism as firms using "practices that are race-neutral (intrinsically free of racial bias) but that nevertheless [have] an adverse impact on blacks as a group."[15] She distinguishes institutional racism from "overt racism." Ezorksy's "overt racism" is conceptually equivalent to Ture and Hamilton's notion of "individual racism." It denotes actions that harm or disadvantage a member of a racially subordinated group due to racial bias.[16]

Proponents of a second, alternative, understanding of institutional racism have criticized Ezosky's account of institutional racism for inflating the concept of racism by surrendering the criteria that institutional rules must be motivated by racial bias or prejudice. They define institutional racism as *institutional* rules or policies—as opposed to individual acts—that are motivated or informed by racial ideology. Lawrence Blum, for example, argues that the term "institutional racism" should only be applied to policies or institutional rules that are motivated by racial prejudice, lest the moral disapprobation that the term "racist" ought to confer is lost due to overuse of the term.[17] Similarly, Tommie Shelby, in *We Who Are*

15. Gertrude Ezorsky, *Racism and Justice : The Case for Affirmative Action* (Ithaca: Cornell University Press, 1991), 9.
16. Ibid.
17. To be fair to Blum, he recognizes that there is something normatively troubling about the reproduction of

Dark, has argued that it would be misleading to characterize a social process that is not motivated by racial ideology as racist.[18]

However, in his recent work, Shelby has offered a third definition of institutional racism that builds on Blum's and Ezorsky's positions. Shelby expands his initial understanding of institutional racism by differentiating between intrinsic and extrinsic institutional racism. Whereas intrinsic institutional racism refers to features of the institution that reflect racial ideology either in terms of the institution's goals, the content of rules, or application of procedures, extrinsic institutional racism does not necessitate that the institution's rules or goals are racially motivated.[19] As Shelby puts it, "[o]n the extrinsic conception, an institution's policies are regarded as racist, not by virtue of the policymakers' racist beliefs, but solely in virtue of the policies' effects. Extrinsic institutional racism occurs when an institution employs a policy that is race-neutral in its content and public rationale but nevertheless has a significant or disproportionate negative impact on an unfairly disadvantaged racial group."[20] However, Shelby—because he understands racism primarily as an ideology—sees disparate effects of "racially neutral" policies as a form of institutional racism primarily because they perpetuate racial ideology.[21] He clarifies that "the underlying idea is that some groups in society are already disadvantaged by racism, and an institution that is not intrinsically racist may nevertheless play a role in keeping these groups in their disadvantaged condition, thus leading some to conclude that they occupy this low station

---

existing disadvantage along the lines of race. He argues that this should be understood as "perpetuating an existing racial injustice caused by past practices of racial discrimination." At first glance, my disagreement with his argument might appear merely terminological. After all, one could simply stipulate that institutional racism is here understood as "the reproduction of past disadvantage caused by past practices of racial discrimination." But I use the term 'institutional racism' precisely in order to convey the kind of moral disapprobation that Blum thinks should be reserved for those kinds of acts that are explicitly motivated by racial animus. Cf. Blum, *I'm Not a Racist, but-- ; the Moral Quandary of Race*, 23.

18. Tommie Shelby, We Who Are Dark : The Philosophical Foundations of Black Solidarity, (Cambridge, Mass.: Belknap Press of Harvard University Press, 2005). Kindle. loc.1613.

19. *Dark Ghettos: Injustice, Dissent, and Reform*, 26.

20. Ibid., 34.

21. Ibid., 22.

because of the disadvantaged groups' culpable failings or inherent inferiority."[22]

Where does my definition of institutional racism fit in this discussion? Like Ezorsky and Shelby, I am concerned with policies or institutional rules that are not overtly or explicitly motivated by racial ideology but reproduce racial economic inequality.[23] Unlike Shelby, however, I want to call the (re)production of economic effects of past racial injustice racist in its own right rather than only insofar as it contributes to the perpetuation of an ideology of black inferiority. And unlike Ezorsky, I think that intentionality has a role to play here, but not necessarily at the level of single institutions or policies.

To explicate what I mean, let me return to Ture and Hamilton's concept of institutional racism. I argue that my definition of institutional racism is closer to what I understand to be the primary preoccupation of Ture and Hamilton—namely, to provide an account of institutional racism that highlights the intentionality of black subordination but does so at the

---

22. Ibid., 24. There is some ambivalence in Shelby's account. Shelby argues that the paradigmatic form of racism is racial ideology, "a widely held set of loosely associated beliefs and implicit judgments that misrepresent significant social realities and that function, through this distortion, to bring about or perpetuate unjust social relations" Tommie Shelby, "Racism, Moralism, and Social Criticism," *Du Bois Review* 11, no. 1 (2014): 70. Shelby does not deny that things other than beliefs and judgments can be racist, but argues that other forms of racism should be understood in terms of the "ideology's main characteristics or effects." *Dark Ghettos: Injustice, Dissent, and Reform*, 24. Actions, for example, can be racist if they draw on affect that has been shaped by racial ideology (ibid.); similarly—and more importantly for this discussion— institutions can be racist even if "the relevant agents do not consciously hold or openly express racist attitudes," simply by "perpetuat[ing] the negative effects of ongoing or past racist actions and thereby encourage racist attitudes and stereotypes. The underlying idea is that some groups in society are already disadvantaged by racism, and an institution that is not intrinsically racist may nevertheless play a role in keeping these groups in their disadvantaged condition, thus leading some to conclude that they occupy this low station because of the disadvantaged groups' culpable failings or inherent inferiority" ibid. It is not entirely clear, however, whether Shelby really considers institutional (and structural) racism primarily in light of the "characteristics and effects" of racial ideology; or whether he also uses the terms to refer to the mere fact that unjust racial disadvantage is reproduced, irrespective of the implications this may have for the reproduction of racial ideology. For example, in his discussion of crime in *Dark Ghettos,* he argues that the impact of "ideological, institutional and structural racism is deepest in ghettos, because racism and neighborhood disadvantage combine to create a uniquely stigmatized group of people." Ibid., 207. This seems to indicate that institutional and structural racism is not here being considered primarily in terms of the characteristics and effects of racial ideology, but rather as social structures that produce racialized outcomes. Similarly, in his discussion of ghettos, Shelby lists "discrimination, institutional racism, private residential choices […]" as factors that contribute to segregation. Ibid., 39. This also seems to suggest that institutional racism refers to institutional practices of discrimination and/or the institutional reproduction of unjust racial inequality, independently from racial ideology.

23. Strictly speaking, only the reproduction of racial economic inequality that can be traced to past racial injustice is formally included in my definition of institutional racism. Given U.S. history, however, the distinction is more analytical than practical— in other words, I think that racial economic inequality and racial economic injustice are, de facto, synonymous.

systemic level rather than at the level of single institutions. In other words, I read Ture and Hamilton as focused on understanding and branding a system of power and advantage as racist rather than identifying individual institutions as racist.

One might here object that Ture and Hamilton clearly define racism as "decisions and policies" that aim to subordinate a racial group.[24] Blum, for example, argues that his definition of institutional racism is in keeping with Ture and Hamilton's concept. Unlike more recent accounts of institutional racism, he argues, Ture and Hamilton "use the term to refer to *intentional* subordination, accompanied by anti-black attitudes."[25] At first glance, Blum seems entirely correct. Given that an intention to subordinate is so central to Ture and Hamilton's conception of racism, it would seem that only those institutions that actively pursue policies that aim to subordinate are appropriately called "institutionally racist."

However, I think that this is an oversimplified reading of Ture and Hamilton's notion of institutional racism.[26] This is not to dispute that *intentional* subordination is a crucial feature of their definition. In fact, I would argue that this is one of the great strengths of their account, especially when compared to conceptions of institutional racism that define it exclusively in terms of disparate impact without considering that disparate impact can have different normative import given the socio-historical context in which it takes place. But Ture and Hamilton's conception of institutional racism is more expansive than Blum allows: Ture and Hamilton, as I have mentioned, understand racism, individual and institutional, as acts or practices that aim to subordinate black Americans. I propose that we understand them as

---

24. Kwame Ture and Charles V. Hamilton, *Black Power: The Politics of Liberation in America* (New York: Random House, 1967), 3.
25. Blum, *I'm Not a Racist, but-- ; the Moral Quandary of Race*, 186.
26. Blum's project simply seems to be at odds with Ture and Hamilton's. Blum is concerned with limiting the use of the term "racism," because he worries about singling out individuals and institutions as racist who should not be labelled thus, therefore weakening the moral charge that "racist" or "racism" holds as a term. I would argue that this commits him to an anomaly view of racism—i.e., a view that holds that there are identifiable individuals who espouse racist views and particular, identifiable institutions that pursue racist goals. But Ture and Hamilton seem less concerned with labelling individuals or individual institutions racist, and more concerned with indicting the system as racist and extending the charge to the passivity of not challenging that institutionally racist order.

indicting this intention to subordinate at (1) a systemic level and (2) as a question of historical fact, rather than as a criterion for identifying "bad apples" in the existing institutional system. As the quote above shows, 'institutional racism' does not require that each white American consciously aims to subordinate black Americans. 'Passively' supporting an institutionally racist order is sufficient to ensure that this order is maintained and reproduced. What seems to matter is that, as a matter of historical record, the existing system was created in order to ensure black subordination. Policies and institutions that perpetuate this system participate in the reproduction of an institutionally racist order. It is not at all clear whether Ture and Hamilton would want to reserve the "normative opprobrium"[27] that the term institutional racism implies—and about which Blum is so concerned—to policies and institutions that explicitly re-commit themselves to a principle that is already constitutive of the U.S. American social, economic and political order. The difference between Blum's discussion of institutional racism and Ture and Hamilton's use of the term is that Ture and Hamilton seem less concerned about identifying particular practices or institutions as "racist" and more concerned with accounting for the general reproduction of race-based disadvantage and subordination. Calling the acceptance of those policies and rules that (re)produce race-based economic disadvantage caused by past racial injustice "racist" would be in keeping with this framework. Ture and Hamilton's concept of institutional racism gets something important right: It avoids both a decontextualized understanding of institutional racism that has separated the definition from any account of intentionality, while also avoiding an account of institutional racism that is too restrictive (and thereby implicitly promoting an 'anomaly view' of racism) by restricting the term to those institutions that actively pursue aims of subordination in the present.[28] Intentionality to subordinate and

27. Blum, *I'm Not a Racist, but-- ; the Moral Quandary of Race*, 20-24.
28. This is an interpretation of Ture and Hamilton that reads them in line with Ibram X. Kendi's conception of racist policies as those policies that produce and exacerbate racial inequity. Kendi himself critiques the concept of institutional racism as 'vague', and is critical of the ways in which Ture and Hamilton's conception of

disadvantage matters—but it matters at the level of the historical development of the core political, social and economic institutions rather than with regard to the present aims of any particular institution. The U.S. political, social and economic system has clearly been marked by an intention to subordinate and disadvantage African Americans. It is for that reason that I think we can speak of the operation of institutional rules that are not themselves explicitly devised to subordinate as institutionally racist for as long as the subordination that was (and by many, still is) intended continues to be so devastatingly effective.

But now that I have justified this rather abstract conception of institutional racism, what does it mean for our understanding of racial economic injustice in financial markets, specifically with regards to for-profit predictive practices? Foregrounding institutional racism in an analysis of racial economic injustice means that demands for racial justice should openly challenge the "normal" operations of credit and insurance markets that structure access to capital and resources on the basis of an existing racialized distribution of risk and value. Minimally, those who have been disadvantaged by a racialized distribution of risk and value that has been brought about by past and present racial injustice, cannot be held financially responsible for financial risks that are due to an unjust history and present. The privatization of the costs associated with a racialized distribution of risk must be challenged. This, I argue, requires challenging core institutional features of capitalist markets, including the reigning logic of profitability and the private nature of valuation, that, unchallenged, entrench the rule of race.

I, therefore, depart from liberal accounts of racial economic injustice that either disregard the question of the articulation of race and capitalist markets entirely or treat white supremacy and capitalism as entirely separate. I do so by arguing that we must consider how institutional racism is articulated with core institutional features of capitalist markets in order

---

institutional racism has been used. Kendi, *How to Be an Antiracist*, 384-89.

to grasp the political implications of challenging institutional racism in financial markets. While expansive liberal accounts of institutional racism and white supremacy, such as Mills' and Shelby's, are helpful in theorizing how race operates in financial markets, such accounts remain incomplete guides to conceptualizing racial economic injustice in financial markets unless they are coupled with an analysis of how core institutional features of capitalist markets, including (a) the prevailing logic of profitability and (b) the private nature of valuations contribute to the reproduction of the rule of race. I argue that the reigning logic of profitability has served to privatize the economic costs arising from a racialized distribution of risk, while the private nature of valuation shields institutional racism from demands for justification.

In the following, I argue that these aspects of capitalist markets can constitute a form of rule, which I call the 'rule of the market.' I will further argue that the rule of the market is one way in which the economic effects of past and present racial injustice are privatized and shielded from democratic oversight and control, and contend that the rule of the market is deployed in order to evade collective responsibility for past injustice. I first show that liberal accounts of racial economic justice do not sufficiently address how the core institutional features of capitalist markets shape and complicate anti-racist struggles by engaging Charles Mills' account of racial economic justice. I focus on Mills' account not only because he has written some of the most influential theoretical accounts of racial justice and has consistently engaged questions of racial economic injustice but also because he is one of the few liberal thinkers who has engaged the question of the relationship between racism and capitalism consistently in his work.[29] I then turn to my account of the rule of the market, and conclude by elucidating the imbrication of the rule of race and the rule of the market.

[29] For an excellent overview of Mills' evolving conception of the relationship between race and class, see Shannon Sullivan, "Smadditizin' across the Years: Race and Class in the Work of Charles Mills," *Critical Philosophy of Race* 5, no. 1 (2017).

So, how does Mills conceptualize the relationship between racial economic injustice and capitalism? In distinction to other liberal theorists of racial justice, Mills' work addresses the question of the imbrication of race and capitalism explicitly. However, his position on this question is challenging to pin down because it has shifted throughout his career. One of Mills' earliest articulations of the relationship between race and capitalism is his 1987 article, "Race and Class: Conflicting or Reconcilable Paradigms?," in which he argued that it is possible to reconcile class and race paradigms.[30] Mills drew on Eric Williams and Oliver Cromwell Cox in order to argue that there is a convincing if incomplete theoretical attempt to develop class-based theories of race that see race as an ideology whose genesis and persistence can be explained by class interests. Mills agreed with Williams and Cox that racism should be understood as an ideology. He argued that "a major contributory source [of racism as the dominant ideology] is the set of phenomenal forms generated by the social structure itself. Just as capitalism tends to foster particular ways of seeing the world, quite independently of conscious efforts of pro-capitalist ideologists, so the slave system produced its own characteristic ideational patterns, experientially based on the obvious correlation of race with social position and degrees of power."[31] However, Mills critiqued Cox's and Williams' approaches as too functionalist. He argued that dominant ideologies develop semi-autonomous logics. At this point, Mills therefore understood racism as an ideology that is engendered by the materialist base of capitalist economies, even if he insisted that racial ideology is semi-autonomous rather than functionally determined by the materialist base.

However, Mills quickly distanced himself from his attempts to develop class-based theories of race and subsequently argued that class-based accounts of race have failed to

---

30. Charles W. Mills, "Race and Class: Conflicting or Reconcilable Paradigms?," *Social and Economic Studies* 36, no. 2 (1987).
31. Radical Theory, Caribbean Reality: Race, Class and Social Domination, (Kingston, Jamaica: University of the West Indies Press, 2010). Kindle. 93.

rethink orthodox, Eurocentric categories.[32] Marxist theories of race, in particular, Mills argued, had not theorized race in its full complexity, especially in its subjective-experiential dimensions. In *Revisionist Ontologies*, for example, Mills writes, "typically what one gets (insofar as any effort is made at all) is an attempt to piggyback the problem of race on to the body of respectable theory. For example, […] one tries to explain race and racism within a Marxist paradigm. But race is still really an afterthought in such deployments, a category theoretically residual. That is, one is starting from a pre-existing conceptual framework, an overall characterization of the system […], a set of large-scale and small-scale theories about how this system works, or should work, and an array of corresponding concepts and then trying to articulate race to this framework."[33]

In the 1990s, Mills' work began to focus on rethinking "categories of what is socially central in the New World."[34] He developed and popularized the concepts of sub-personhood and white supremacy as socially central categories in Western modernity. Mills has described this shift as the metamorphosis from an "orthodox Marxist" to a "critical race theorist," a transition from "class to race".[35]

As Mills distanced himself from class-based accounts of race, he increasingly moved away from seeking to theorize the relationship between capitalism and race. There are two key reasons for this, I believe: First, the strategic orientation of his project seems to have shifted in the 1990s: Mills was increasingly concerned with intervening in mainstream

---

32. "Revisionist Ontologies," in *Blackness Visible* (Ithaca, N.Y.: Cornell University Press, 2015). See also Mills, *Radical Theory, Caribbean Reality: Race, Class and Social Domination*. loc72. For example, in "Radical Theory, Caribbean Realities," Mills, referring to his own class-based account of race in "Race and Class," argues that "the positive theoretical alternative proposed at the end is weaker. The project of giving a class theorization of race can mean (1) reducing race to class or (2) explaining why, though race should not be reduced to class, an historical materialist account provides the most illuminating optic for explaining why race has the importance that it does. At times, I think I blur the two, so that whereas I mean to do (2), I end up in places doing (1)." Although Mills indicates that a non-reductivist historical-materialist account of race is possible, he largely eschews the project of developing such an account ibid., xiii.
33. Mills, "Revisionist Ontologies," 107.
34. *Radical Theory, Caribbean Reality: Race, Class and Social Domination*. xiii.
35. "Whiteness as a Socio-Political System: A Philosophical Perspective," in *White Out: The Continuing Significance of Racism*, ed. Woody Doane (New York: Routledge, 2003), loc.72.

philosophy, in order to (1) make race visible in contemporary philosophy, and (2) to set the record straight with regard to the history of philosophy. Mills sought to undermine the conceit that the Enlightenment overcame normative class distinctions. He undertook this project not only by showing that ascriptive status hierarchies were integral to the thought of those philosophers venerated as the enlightened vanguard of European thought, but also by emphasizing the lasting legacy of white supremacy and insisting that contemporary contours of white supremacy should be taken seriously in philosophical analysis.[36]

Second, the political context of his work had changed: Alternatives to capitalism no longer seemed viable. In *Radical Theory*, Mills recounts his impression of the political potential of alternatives to capitalism in the 1990s. "[I]ncreasingly, I got a sense of talking, if not to myself, then maybe to a half-dozen people around the country. I had been on the organizing committee for the 1994 APA Central Division Meetings in Kansas City, and had pushed for a "market socialism" panel, as the only plausible form of socialism left. Dropping by at the meetings to see how it was going, I saw a room with four people on the panel – and only one in the audience! Clearly, this thing, in whatever guise, was dead in the water. Stimulated both by my own blackening personal experience and more global changes, I made a self-conscious decision to start working systematically on race."[37]

Mills' objectives—analyzing white supremacy, making race visible as a central category of modern European thought—are crucial, and his shift away from questions of the entanglements of race and capitalism should be understood in this context. However, this shift also had its costs: It meant that the articulation of racial oppression and capitalism remained under-explored and underdeveloped in Mills' work.[38] As Mills himself has put it, he

36. "'Ideal Theory' as Ideology," *Hypatia* 20, no. 3 (2005).
37. *Radical Theory, Caribbean Reality: Race, Class and Social Domination*. 22.
38. Mills never rejects historical-materialist accounts of race. In "Materializing Race," he begins to develop such an account. However, Mills here provides a material account of white supremacy without a theory of capitalism. Consequently, the question of the relationship between capitalism and white supremacy remains underdeveloped. "Materializing Race," in *Living Alterities : Phenomenology, Embodiment, and Race*, ed. Emily

"bracket[ed] the question of the possibility of a theoretical synthesis [of a theory of capitalism and racial oppression] and simply focus[ed] on racial oppression as a system in its own right."[39]

In his recent work, Mills has evaded the question of what, if any, role capitalism plays in perpetuating racial subordination. For example, in *Black Rights/White Wrongs*, Mills foregrounds the economic dimensions of racism, but ends up disentangling them completely from the dynamics of capitalist social orders. He starts out promisingly, arguing that it is a "mistake to see only class—one's relationship to the means of production […]—as material, and only recognize class exploitation."[40] Instead, Mills argues, "the big three—class, gender and race—are all part of a political economy of domination" and "race is material also, […] in terms of economic advantage/disadvantage."[41]

However, Mills then goes on to characterize racial economic injustice as a form of group exploitation: One racial group (which he calls R1s) exploits another racial group (R2s). As Mills points out, this has the advantage of foregrounding 'racial interest.' It highlights that all whites, including the white working class, have a vested interest in maintaining a system of white supremacy. On the downside, it effectively conceptualizes white supremacy as a system that is governed by a logic that is entirely separate from, and indeed parallel to, capitalism. Consequently, it does not allow Mills to explore how the two logics are articulated and forecloses considerations of how capitalist dynamics might be driving and shaping white supremacy and limiting anti-racist political struggles.

In his discussion of corrective justice, Mills goes even further in distancing racial

---

S. Lee (Albany: State University of New York Press, 2014). A recent exception to this broader trend is Mills' Interview with the New Left Project Review, see *Black Rights/White Wrongs: The Critique of Racial Liberalism*, 3-9.

39. "Whiteness as a Socio-Political System: A Philosophical Perspective," 149.

40. *Black Rights/White Wrongs: The Critique of Racial Liberalism*, 8.

41. Ibid. Mills here adds that race is material also in the "patterns of social cognition shaped by the body." Since I am here focused on racial economic inequality, I will leave this aspect unaddressed.

oppression from any considerations of the dynamics of a capitalist social order. He argues that "black radical liberalism […] makes corrective justice its central concern."[42] Corrective justice here refers to remedial measures both for discrete historical injustice, for the legacy of that injustice, and for the exploitation of the vulnerabilities that stem from this legacy.[43] Mills is at pains to argue that these claims are theoretically prior to any concerns with class, as well as entirely independent of critiques of capitalism and can thus potentially command broader agreement. In Mills' words, "any good liberal," irrespective of whether they accept left-liberal critiques of class society, will recognize racial injustice. In other words, accepting and remedying racial economic injustice does not require a theorization of class exploitation or challenging the liberal framework, and Mills consequently calls for a "nonracial capitalism."[44] I agree that it is possible to analytically distinguish between racial injustice and the injustices of a class society, but Mills' efforts to portray racial economic injustice as distinct from the "normal operations" of capitalist economies means that he loses sight of the role that capitalist markets play in producing and reproducing racial economic injustice.

Indeed, what Mills presents as an analytical disentangling of two distinct issues sometimes resembles a cut through the Gordian knot instead. This results in uncharacteristically formal and thin conclusions. In "Racial Exploitation," for example, Mills writes, "racial exploitation is at least in theory eliminable within a capitalist framework […]. One simple formulation of the political project would thus be the demand for a non-racial or non-white-supremacist capitalism."[45] He continues: "However, I qualified the term eliminable with 'in theory.' The counterargument that needs to be borne in mind is that while a non-racial capitalism could certainly have developed in another world, the fact that the capitalism in our world has been so thoroughly racialized from its inception means that racial

42. Ibid., 209.
43. Ibid., 118-19, 31.
44. Ibid., 126.
45. Ibid.

inequality has long been crucial to its reproduction as a particular kind of capitalist formation. Logical distinctions in theory between U.S. capitalism and white supremacy are all very well, but their fusion in reality into the composite entity of white-supremacist capitalism makes any political project of attempting to separate the two a non-starter in part because of the reciprocal imbrication of class and race, class being racialized and race being classed. I will not say anything more about this counterargument, but it should be noted as an important objection to the whole project."[46] This, unfortunately, is where Mills' engagement with this objection *ends.*

Simply side-stepping the question of the entanglement of race and capitalism is obviously an inadequate theorization of their articulation. Mills deals in hopes that a non-racial capitalism is "at least theoretically" possible.[47] If Mills means by "theoretically possible" that we can conceive of a non-racial capitalism, I would agree.[48] But I would also contend that for the purposes of thinking about what social justice requires, this is one abstraction too removed. The pressing question confronting us when theorizing racial economic justice in the U.S. today is whether markets, as mechanisms for producing and allocating goods and as tools for envisioning and realizing futures, can achieve outcomes that

---

46. Ibid.
47. Ibid.
48. For an argument that capitalism is inseparable from racial domination, see Jodi Melamed, "Racial Capitalism," *Critical Ethnic Studies* Vol.1, no. No. 1 (2015): 76. Melamed derives her conception of "racial capitalism" from Cedric Robinson's seminal *Black Marxism*. See Cedric J. Robinson, *Black Marxism: The Making of the Black Radical Tradition* (Chapel Hill, N.C.: University of North Carolina Press, 2000). Melamed argues that "*capitalism is racial capitalism* [my emphasis]. Capital can only be capital when it is accumulating, and it can only accumulate by producing and moving through relations of severe inequality among human groups—capitalists with the means of production/workers without the means of subsistence, creditors/debtors, conquerors of land made property/the dispossessed and removed. These antinomies of accumulation require loss, disposability, and the unequal differentiation of human value, and racism enshrines the inequalities that capitalism requires. Most obviously, it does this by displacing the uneven life chances that are inescapably part of capitalist social relations onto fictions of differing human capacities, historically race." However, even Melamed's formulation might allow, I think, for a non-racial capitalism *in theory*. While she asserts that capitalist social relations require fictions of differing human capacities, her formulation is ambiguous with regard to whether such fictions of differing human capacities must always take the form of "race." For a recent exchange on whether capitalism is "necessarily racist," see Nancy Fraser, "Is Capitalism Necessarily Racist? Presidential Address Delivered at the One Hundred Fourteenth Eastern Division Meeting of the American Philosophical Association in Savannah, GA, on January 5, 2018," *Politics/Letters* 1, no. 15 (2019); Jordan Camp, T., Christina Heatherton, and Manu Karuka, "A Response to Nancy Fraser," ibid.

are racially just. In order to answer that question, we need to understand not just *that* but *how* race and capitalism are mutually articulated. Otherwise, answers to the question of whether a non-racial capitalism is practically possible remain purely speculative, as well as completely separate from any emancipatory praxis.

The Rule of the Market

Contrary to Mills, I argue that historical struggles against racially unjust financial practices suggest that core institutional features of capitalist markets, namely the profit motive and the private nature of valuation, contribute to the reproduction of racial economic injustice in capitalist social orders and shield it from demands for justification. If the use of race as a proxy for risk cannot be understood solely as a deviation from economic rationality, as I have argued, and must, instead, also be understood as an instantiation of a historically specific form of economic rationality in a white supremacist system—if, in other words, it can be economically rational to use race as a proxy for risk—for-profit predictive practices will reproduce and amplify racial economic injustice. After all, in a context in which predictive practices are subject to the profit motive, individual statistical expectations are treated as private property, and race is both correlated with risk due to past racial injustice and presumptively predictive of risk due to the anticipation of the pervasive valorization of whiteness, the profit motive will enforce a differentiation of risk assessments along lines of race. This will necessarily result in the privatization of the financial burdens of past and present injustice; it will, in other words, produce *race(d) futures.*

Moreover, the private nature of valuation and risk assessment practices insulates market outcomes from demands for justification and rectification. My case studies suggest that there are two ways in which the private nature of risk assessment and valuation practices insulates market outcomes from demands for justification and rectification: First, there is the issue of

private control over the "means of prediction," to borrow Ivan Ascher's phrase.[49] Chapter 1 provides an example of how the jealously guarded power to control and classify risks is mobilized in order to shield risk-making practices from demands for public accountability and control. When challenged by early civil rights activists, the insurance industry sought to fend off public supervision of or intervention in their risk assessment practices by arguing that the classification of risks and the valuation of futures was within their purview and could not, legitimately, be subject to public supervision or control. While early civil rights activists successfully argued that the public had a right to supervise the classification of risks and the valuation of futures, the resulting legislation never effectively curtailed the private power to make risks and value futures. The failure to effectively curtail private classificatory power allowed insurance companies to continue using race as a proxy for risk and, ultimately, replaced a policy of differential inclusion with a policy of categorical exclusion. Similarly, in Chapter 2, we have seen how efforts to problematize and challenge racially unjust risk assessment practices were rebuffed by industry representatives who argued that only lenders could legitimately and competently assess the risks that 'new' financial subjects represented.

The normative issue in both of these cases, it would seem, is that control over the assessment of creditworthiness is concentrated in the hands of a small and predominantly white elite. This concentration of power is problematic for two reasons: First, to quote Iris Marion Young, it means that a few individuals have the power to "make decisions […] that affect millions of other people," while those who are subject to that power have little to no influence regarding the valuation of their futures.[50] Second, in the context of a society and economy in which the valorization of whiteness is deeply entrenched, and where the power to control the rules and practices of economic institutions is concentrated in the hands of a white

49. Ascher, *Portfolio Society: On the Capitalist Mode of Prediction*; Young, *Justice and the Politics of Difference*.
50. *Justice and the Politics of Difference*, 23.

elite, these risk assessment practices are likely structured by a racial common sense that is all the harder to challenge if it is exercised as a form of concentrated private power.

But I argue that the problem of the private nature of risk assessment and valuation practices goes beyond the problem of *concentrated* private power, and would persist even in the absence of concentrated private control over the "means of prediction." When practices that reproduce racial inequality are challenged, the "captains of industry and finance", to use Thorstein Veblen's expression, often respond by arguing that they are merely bowing to the 'will of the market.'[51] For example, as Chapter 1 shows, representatives and supporters of the life insurance industry argued that public supervision of their risk assessment practices was unnecessary because their risk assessment practices were already supervised by a much stricter taskmaster: the market. Similarly, as I demonstrate in Chapter 2, debates about racial discrepancies in subprime lending likewise invoked market discipline to ward off public oversight over their risk assessment and valuation practices. In many cases, the argument that racial practices are merely a reflection of the 'will of the market' is a cover for racist attitudes and an evasion of responsibility for arbitrary racial practices. However, in some cases, it is more than that: it is an acknowledgment and reflection of the widespread valorization of whiteness that expresses itself in market outcomes.[52]

I argue that this evasion of responsibility is not simply a matter of rhetoric but a feature of markets; i.e., it highlights the way in which markets undermine a sense of responsibility for past injustice. Market outcomes are insulated from demands for justification because, at a very basic level, they are the outcomes of aggregate individual decisions that are made in

51. Veblen, Thorstein. *The Engineers and the Price System*. New Brunswick, N.J.: Transaction Books, 1921, 61.
52. Such arguments have often been downplayed by scholars of race and markets in the U.S. There are obviously many good reasons for stressing the 'visible hand' of the state rather than the invisible hand of the market, but I would wager that part of the reason that these kinds of arguments are downplayed also has something to do with a fundamental unease about the way in which they seem to leave no room for any attribution of responsibility. See, for example, Jessica Trounstine, *Segregation by Design: Local Politics and Inequality in American Cities* (Cambridge, United Kingdom: Cambridge University Press, 2018). Trounstine makes the argument that concerted actions rather than the decentralized decision-making procedure of the market are to blame for de facto segregation.

dispersed isolation and that are not subject to demands for justification. As Will Roberts has recently argued in his republican re-reading of Marx, markets make us dependent on the decisions of other market participants.[53] The trouble is not that we are dependent on others, but rather that the actions and decisions of others impinge on us without being justified. In fact, their decisions cannot even be questioned: Market participants do not have to offer reasons for their desires, preferences, or choices, and aggregate outcomes cannot be traced back to identifiable individuals. As Roberts puts it in his re-reading of Marx's account of capitalist markets as sites of domination: "Marx sees in the modern world a panoply of new threats to freedom. He sees in the market a domain of impersonal domination in which decisions about production and consumption, decisions that impinge upon every producer or consumer via the price mechanism, are made in dispersed isolation, without there being any possibility of these decisions being challenged by those they affect and without there being any need for reasoned justifications to be given. He sees in a society organized around production for the market, therefore, a society of individuals rendered systematically irresponsible for themselves and their action."[54]

This idea of capitalist markets as dominating insofar as they render decisions unjustifiable and render us "systematically irresponsible" can help explain how the privatization of the costs of past racial injustice and valuation of whiteness is protected from demands for justification by appearing as the outcome of decisions that have no author. This appearance makes it difficult to see the economic costs of past racial injustice and the valuation of whiteness as tractable objects of democratic governance—as structures that can be addressed, challenged and abolished through collective self-governance. In other words, deference to the rule of the market renders us—or allows us to be rendered—systematically

53. William Clare Roberts, *Marx's Inferno: The Political Theory of Capital* (Princeton: Princeton University Press, 2017).
54. Ibid., 256.

irresponsible for our own decisions, including for the valorization of whiteness. In fact, in many cases, the price mechanism as the sole or dominant structure of orientation for our actions on the market renders any attempt to remain responsible for our decisions, to reject valorizations of whiteness, difficult or even intractable at the level of individual action.

But while capitalist markets have a *tendency* to privatize the costs of past injustice and shield economic outcomes from demands for justification, this tendency can be contested and challenged. While the profit motive is obviously central to capitalist markets, the dominant logic of profitability can be altered, and the private nature of valuation can be contested. In other words, it is not inevitable that markets privatize and reproduce past injustice or the valorization of whiteness. But in order to disrupt such a reproduction, the reigning logic of profitability, and hence the mode of commodification of risks must be transformed. The valorization of whiteness can be challenged in markets—but this cannot occur at the level of decentralized private decisions,[55] and thus requires a public intervention into practices of valuation, and hence, a challenge to the private nature of valuation. The failure to challenge these tendencies constitutes, I would argue, a political relationship to the market that can be described as the rule of the market; i.e., the rule of an already constituted economic logic that valorizes whiteness.

The rule of the market is therefore not something that is inevitable in capitalist social orders. While key institutional characteristics of capitalist markets make the rule of the market more likely, the rule of the market is no inevitable byproduct or result of the operations of capitalist markets. The market only 'rules' when the democratic responsibility to govern economic processes is abdicated and disavowed. This, I argue, suggests that demands for rectification or redistribution in the name of racial economic justice touch

55. To be clear, there are attempts to challenge the valorization of whiteness that rely on subjecting the private and decentralized decisions of individual participants in markets to demands for justification, such as consumer boycotts. Such boycotts work, however, by deprivatizing actions in markets and providing a way to take collective action.

directly on questions of expanding democratic control over the economy.

Conclusion

In this chapter, I have argued that a conception of racial economic justice should focus, first and foremost, on the *active* reproduction of past racial economic injustice and the continuing valorization of whiteness; and that it must challenge the privatization of the burdens of that unjust past and present. Focusing on this aspect of the race/risk nexus, however, raises questions about the imbrication of racial economic injustice and capitalist markets. Most liberal accounts of racial economic injustice do not address this question directly. Those that do—such as Charles Mills' account—fail to consider how demands for corrective justice directly challenge core institutional features of capitalist markets. I have here argued that for-profit predictive apparatuses will privatize the economic burdens of past and present racial injustice, while the private nature of valuation insulates market outcomes from normative scrutiny and demands for justification. I have argued that the private nature of valuation exceeds the problem of concentrated private power corrupted by racial bias by drawing on recent accounts of market domination in order to argue that the problem of arbitrary power here goes deeper, and concerns the insulation of the actions of market participants from demands of justification. This insulation allows for the reproduction of the valorization of whiteness, and past racial economic injustice. Consequently, I have argued that a more expansive understanding of racial economic injustice that challenges the privatization of past and present racial economic injustice requires a democratic project of restructuring valuation and risk assessment practices.

EPILOGUE

This dissertation has examined how we think about racial justice when it comes to financial markets. It has traced how market-based practices of prediction have reproduced and exacerbated racial economic injustice in the U.S. and examined how anti-racist movements sought to problematize and challenge the race/risk nexus in insurance and housing finance markets. I have argued that debates about racial economic justice in financial markets have often construed the race/risk nexus in a narrow manner, either as a form of individual racial bias or as a racially inflected risk assessment technology. In debates about racially unjust predictive practices, I have argued, too much emphasis has been placed on ensuring and enforcing risk-based lending practices. Given that race structures social regularities that are considered in risk assessment practices, however, such a focus threatens to displace broader normative questions about how the existing distribution of risk and creditworthiness has come about, and who should bear the costs of an unjust past and present.

In order to address the race/risk nexus in its full complexity, I have argued, it is necessary to recognize how the rule of race is reproduced and entrenched by core institutional features of capitalist markets, namely the profit motive and the private nature of valuation. A more expansive notion of racial economic justice in financial markets that moves beyond appeals to non-racial risk-based lending practices must contest the reigning mode of profitability as well as the private nature of valuation. This means, I have argued, that struggles for racial economic justice in financial markets require expanding democratic control over the way in which economic value is posited.

This dissertation has analyzed *a* race/risk nexus—one in which risk appears as a commodity. But as I write the last pages of this dissertation, the U.S. is experiencing one of the most sustained and widespread waves of protests against raced risk—risk, here, not as a

commodity but as the risk of violence meted out against black men and women by the police, as in the case of George Floyd and Breonna Taylor, and by white civil society, as in the case of Ahmaud Arbery and Christian Cooper. The murder of George Floyd by a white police officer, Derek Chauvin, has sparked off national and international protests denouncing the routine anti-black violence meted out by the state and by white civil society. The protests have been, in the words of Edwidge Danticat, "both intimately specific and sweepingly ambitious, honoring a single life while indicting a national history."[1] They have also been stunningly successful, shifting the boundaries of discourse more quickly than many anticipated. While the long-term effects of the current moment are uncertain, the protests have already altered public opinion on issues of structural racism and racial injustice and brought about policy changes that few could have imagined a few weeks ago. According to reporting by the New York Times based on polling by Civiqs, the support for the Black Lives Matter movement has increased substantially in the first two weeks of the protests following George Floyd's death.[2] Similarly, a poll conducted by Monmouth University found that a broad majority of U.S. Americans support the protests and acknowledge that African Americans are more likely to be victims of police violence, a significant shift from a similar poll conducted in the wake of the police killing of Alton Sterling in 2016.[3]

Protestors have articulated sweeping demands for a fundamental reimagining of policing in the U.S. While these demands are, of course, not new, the sheer number of editorials and opinion pieces on prison abolitionism and defunding the police marks a new kind of visibility for such demands. Black Lives Matter co-founder Patrisse Cullors has argued that this is a profound shift: "This is massive. This is the first time we are seeing, in our country's history,

1. Edwige Danticat, "So Brutal a Death," *The New Yorker*, June 22 2020.
2. Nate Cohn and Kevin Quealy, "How Public Opinion Has Moved on Black Lives Matter," *New York Times*, June 10 2020.
3. Monmouth University Polling Institute, "Protestors' Anger Justified Even If Actions May Not Be," ed. Patrick Murray (Monmouth University, 2020).

a conversation about defunding, and some people having a conversation about abolishing the police and prison state."[4]

And these demands have not only made it onto the editorial pages. The protests have already achieved tangible political gains: According to reporting by the Marshall Project and FiveThirtyEight, 159 policing bills and resolutions have been introduced in state legislatures since the death of George Floyd.[5] Bills regulating use of force and bills strengthening police oversight and accountability have been passed in New York, Iowa, and Colorado.[6] In Minneapolis, a veto-proof majority on the city council has pledged to disband the Minneapolis police department.[7] In New York City, Bill de Blasio has announced plans to cut the NYPD's budget, albeit reluctantly.[8] Similar proposals have been made in Los Angeles, San Francisco and Boston. In L.A., Mayor Eric Garcetti has scrapped a $120 million planned increase of the police budget, proposed to cut the existing police budget by a further $250 million, and pledged to invest in black communities.[9] Similarly, San Franciscan Mayor London Breed has announced a four-point plan that diverts funding from police to other forms of crisis intervention and seeks reinvestment in communities of color.[10] In Boston, Mayor Marty Walsh has announced a $15 million cut of the police budget.[11]

Moreover, a number of school districts have suspended or cut their ties with police departments, meeting long-standing demands of local education and criminal justice activist

---

4. Dionne Searcey and John Eligon, "Minneapolis Will Dismantle Its Police Force, Council Members Pledge," *New York Times*, June 7 2020.
5. Weihua Li and Humera Lodhi, "The States Taking on Police Reform after the Death of George Floyd," *FiveThirtyEight*, June 18.
6. Ibid.
7. Searcey and Eligon, "Minneapolis Will Dismantle Its Police Force, Council Members Pledge."
8. Janos Marton, "New York City 2021 Candidates Demand Immediate Cuts to NYPD Budget," *Medium*, June 1 2020.
9. James Rainey, Dakota Smith, and Cindy Chang, "Growing the LAPD Was Gospel at City Hall. George Floyd Changed That.," *Los Angeles Times*, June 5 2020. Vanessa Romo, "Amid Protests against Police Violence LA Mayor Eric Garcetti Announces Cuts to LAPD," npr.org, https://text.npr.org/s.php?sId=869242938.
10. Jill Cowan, "What to Know About Calls to Defund the Police in California," *The New York Times*, June 9 (Updated June 12) 2020.
11. Karina Zaeits, Janie Hasemann, and Jennifer Borresen, "Protests Lead to Wave of Policing Reform," *USA Today*, June 24 2020.

organizations, such as Black Visions Collective, Reclaim the Block, and the Black Organizing Project. These include school districts in Charlottesville, Denver, Minneapolis, Milwaukee, Seattle, Portland, and Oakland.[12] Similar steps are being considered in Boston, Maryland, Pittsburgh, and Philadelphia.[13]

The demands at the core of the current protests are demands for what Megan Ming Francis has called “freedom from racist violence,” demands for an end to being subjected to the constant risk of violence by the state and white civil society.[14] These are risks that this dissertation has not addressed. But the race/risk nexus on which this dissertation focuses—the nexus between race and *commodified* risk—is part of the same story, as the protests have made clear by highlighting links between systemic anti-black violence and other forms of structural racism, including racial discrepancies in health, housing, and economic outcomes.

In the wake of the protests, many of the financial institutions, whose role in the reproduction of racial economic injustice this dissertation has examined, have publicly acknowledged the structural nature of racism in the U.S. to an unprecedented degree. Almost all major U.S. American banks and investment firms, for example, have issued statements in the wake of George Floyd’s murder. These statements have ranged from gestures of solidarity, such as Jamie Dimon, the CEO of JPMorgan Chase taking a knee, to frank

---

12. Andrew Goldstein, "2 PPS Board Members Make Call for School Police Transparency," *Pittburgh Post-Gazette*, 25 June 2020; Alicia Lee, "Minneapolis Schools and Parks Cut Ties with Police over George Floyd’s Death " *CNN*, June 4 2020. Lois Beckett, "Minneapolis Public School Board Votes to Terminate Its Contract with Police," *The Guardian*, June 3 2020; Ryan Faircloth and Anthony Lonetree, "Officers Disappear from Schools," *StarTribune*, June 22 2020; Zaeits, Hasemann, and Borresen, "Protests Lead to Wave of Policing Reform."; Henry Gass, "Do Officers Belong in Schools? Districts Cut Ties, Debate Best Path to Safety," *The Christian Science Monitor*, June 18 2020; Moriah Balingit, Valerie Strauss, and Kim Bellware, "Protests Push Highschools to Cut Police from Grounds," *The Washington Post*, June 14 2020.
13. Maddie Hanna, "Call to Remove Police from Philadelphia Schools; Students and Advocates Address Board. District Is Already Eying Role of Police," *Philadelphia Inquirer*, June 19 2020. Goldstein, "Call for Police Transparency." Donna St George, "State School Arrest Rate Higher for Black Students," *The Washington Post*, June 25 2020. Milton J. Valencia and Meghan E. Irons, "Need for Police in the Schools Questioned," *The Boston Globe*, June 17 2020.
14 Megan Ming Francis, "Let’s Get to the Root of Racial Injustice," March 21, 2016 Seattle. TEDxRainier video, 19:37, https://www.youtube.com/watch?v=-aCn72iXO9s&feature=emb_title. For Ming Francis’ account of the history of the NAACP’s early 20th century campaigns for “freedom from racist violence,” see Megan Ming Francis, *Civil Rights and the Making of the Modern American State* (New York, NY: Cambridge University Press, 2014).

acknowledgments of systemic racism, as in the statement of Larry Fink, CEO of BlackRock, in which he condemned the "murders of Ahmaud Arbery and George Floyd," as "symptoms of a deep and long-standing problem in our society" that must be "addressed on both a personal and systemic level."[15] Some have dismissed these statements as facile and hypocritical, pointing to pervasive patterns of discriminatory lending in financial markets.[16] Irrespective of what one makes of their sincerity, public statements by CEOs of major U.S. American Banks in solidarity with Black Lives Matter demonstrators and clear denouncements of extrajudicial anti-black violence are signs of a shift in public discourse. Such statements are noteworthy for what they acknowledge and make visible in a space where such acknowledgments cannot be taken for granted.

But they are also noteworthy for what they leave unsaid. In the wake of George Floyd's death, Charlie Scharf, CEO of Wells Fargo pledged to "do all we can to support our diverse communities and foster a company culture that deeply values diversity and inclusion."[17] Jamie Dimon, CEO of JPMorgan Chase, stated that "we are committed to fighting against racism and discrimination" and to be "inclusive in our work and in the neighborhoods where we operate."[18] Unsurprisingly, these statements do not reflect on the role that JPMorgan Chase and Wells Fargo played in the production and reproduction of racial economic injustice, including in the run-up to the subprime crisis, that has resulted in multiple lawsuits alleging discriminatory lending practices.[19]

---

15. High Son, "Appalled—Here's What Wall Street CEOs Are Saying About the Killing of George Floyd and Protests Rocking U.S. Citites," *CNBC*, June 1 2020.
16. Robert Reich, "Trump Stokes Divisions with Racism and Rage: And the American Oligarchy Purrs," *The Guardian*, June 14 2020.
17. Son, "Appalled—Here's What Wall Street CEOs Are Saying About the Killing of George Floyd and Protests Rocking U.S. Citites."
18. Nathan Bomey, "JP Morgan Pays $55m to Settle Mortgage Discrimination Lawsuit," *USA Today*, January 18 2017.
19. See, for example, United States v. Wells Fargo Bank, 1:12-cv-001150 (D.D.C); Payares. JPMorgan Chase 2:07-cv-05540 (C.D. Cal.) Powell, "Bank Accused of Pushing Mortgage Deals on Blacks."; Cavell, "Ghetto Loans: Discrimination against African American Borrowers in Mortgage Markets and the Impact of the Ibanez Decision."

These silences are hardly surprising. But the present political moment, with its renewed emphasis on the structural aspects of racial injustice, presents an opportunity to not only challenge financial institutions for failing to take responsibility for past and present discriminatory lending practices but to also advance the argument that the ‘mere’ reproduction of existing racial economic injustice in and through practices of for-profit prediction confers responsibility to address the race/risk nexus. Crucially, this would require more than calls for ‘responsible’ lending practices. It would require challenging the ‘rule of the market,’ a democratic commitment to restructuring risk assessment and valuation practices with the explicit aim of abolishing the valorization of whiteness and repairing past racial injustice, and an anti-racist reconstruction of the economy.

Bibliography

Alborn, Timothy. *Regulated Lives: Life Insurance and British Society, 1800–1914.* Toronto: University of Toronto Press, 2009.

Altman, Andrew. "Civil Rights." In *Stanford Encyclopedia of Philosophy,* edited by Edward N. Zalta 2017. https://plato.stanford.edu/archives/win2017/entries/civil-rights.

Ascher, Ivan. *Portfolio Society: On the Capitalist Mode of Prediction.* Near Futures. Brooklyn, New York: Zone Books, 2016.

Austin Turner, Margert, Michael Fix, and Raymond J. Struyk. "Opportunities Denied, Opportunities Diminished." In *Urban Institute Report 91-1*. Washington D.C., 1991.

Balingit, Moriah, Valerie Strauss, and Kim Bellware. "Protests Push Highschools to Cut Police from Grounds." *The Washington Post*, June 14 2020.

Baucom, Ian. *Specters of the Atlantic: Finance Capital, Slavery, and the Philosophy of History.* Durham, NC: Duke University Press, 2005.

Becker, Gary. *The Economics of Discrimination.* Chicago, IL: University of Chicago Press, 1971.

Beckett, Lois. "Minneapolis Public School Board Votes to Terminate Its Contract with Police." *The Guardian*, June 3 2020.

Benitez, Michael. "Resituating Culture Centers within a Social Justice Framework: Is There Room for Examining Whiteness?". In *Culture Centers in Higher Education: Perspective on Identity, Theory and Practice*, edited by Lori Patton. Sterling, Virginia: Stylus, 2010.

Biondi, Martha. *To Stand and Fight : The Struggle for Civil Rights in Postwar New York City.* Cambridge, Mass.: Harvard University Press, 2003.

Blum, Lawrence A. *I'm Not a Racist, but-- ; the Moral Quandary of Race.* Ithaca, NY: Cornell University Press, 2002.

Bobo, Lawrence, Ryan Smith, and James Kluegel. "Laissez-Faire Racism: The Crystallization of a Kinder, Gentler, Antiblack Ideology." In *Racial Attitudes in the 1990s : Continuity and Change*, edited by Steven Jack K. Martin, A. Tuch. Westport, Conn.: Praeger, 1997.

Bomey, Nathan. "JP Morgan Pays $55m to Settle Mortgage Discrimination Lawsuit." *USA Today*, January 18 2017.

Bonilla-Silva, Eduardo. *Racism without Racists Color-Blind Racism and the Persistence of Racial Inequality in America.* 4th ed. Lanham, Md.: Rowman & Littlefield, 2014.

Bouk, Daniel B. *How Our Days Became Numbered: Risk and the Rise of the Statistical Individual.* Chicago: University of Chicago Press, 2015.

Bradford, Calvin. "Financing Home Ownership: The Federal Role in Neighborhood Decline." *Urban Affairs Quarterly* 14, no. 3 (1979): 313-35.

———. *Risk or Race?: Racial Disparities and the Subprime Refinance Market.* Center for Community Change Washington, DC, 2002.

Broussard, Albert S. *African-American Odyssey: The Stewarts, 1853-1963.* Lawrence: University Press of Kansas, 1998.

Callon, Michel, ed. *The Laws of the Markets*. Oxford ; Malden, MA: Blackwell Publishers/Sociological Review, 1998.

Camp, Jordan, T., Christina Heatherton, and Manu Karuka. "A Response to Nancy Fraser." *Politics/Letters* 1, no. 15 (May 20 2019).

Carle, Susan D. "Debunking the Myth of Civil Rights Liberalism: Visions of Racial Justice in the Thought of T. Thomas Fortune, 1880-1890." *Fordham Law Review* 77, no. 4 (2008): 1479-534.

Cavell, David. "Ghetto Loans: Discrimination against African American Borrowers in Mortgage Markets and the Impact of the Ibanez Decision." *Georgetown Journal of Legal Ethics* 25, no. 3 (2012): 449-68.

"The Civil Rights Measure." *The New York Age*, April 26 1890, 4.

Cohen, Nancy. *The Reconstruction of American Liberalism, 1865-1914.* Chapel Hill: University of North Carolina Press, 2002.

Cohn, Nate, and Kevin Quealy. "How Public Opinion Has Moved on Black Lives Matter." *New York Times*, June 10 2020.

"The Color Line in Insurance." *The Weekly Underwriter: An Insurance Newspaper*, July 19 1884, 31.

Conley, Dalton. *Being Black, Living in the Red : Race, Wealth, and Social Policy in America.* Berkeley: University of California Press, 1999.

Cowan, Jill. "What to Know About Calls to Defund the Police in California." *The New York Times*, June 9 (Updated June 12) 2020.

Crump, Jeff, Kathe Newman, Eric S. Belsky, Phil Ashton, David H. Kaplan, Daniel J. Hammel, and Elvin Wyly. "Cities Destroyed (Again) for Cash: Forum on the U.S. Foreclosure Crisis." *Urban Geography* 29, no. 8 (2008): 745-84.

Danticat, Edwige. "So Brutal a Death." *The New Yorker*, June 22 2020.

Daston, Lorraine. *Classical Probability in the Enlightenment.* Princeton, N.J.: Princeton University Press, 1988.

Dawson, Michael C. *Not in Our Lifetimes: The Future of Black Politics.* Chicago; London: University of Chicago Press, 2011.

de Goede, Marieke. "Repoliticizing Financial Risk." *Economy and Society* 33, no. 2 (May 2004): 197-217.

"Discrimination." *New York Freeman*, April 30 1887, 2.

Du Bois, W. E. B. *Black Reconstruction in America.* New York: Simon & Schuster, 1995.

———. "The Position of the Negro in the American Social Order: Where Do We Go from Here?". *The Journal of Negro Education* 8, no. 3 (1939): 551.

———. "Prospect of a World without Race Conflict." *American Journal of Sociology* 49, no. 5 (1944): 450-56.

———. *The Souls of Black Folk.* Project Gutenberg, 2008. https://www.gutenberg.org/ebooks/408.

———. *Worlds of Color.* New York, NY: Council on Foreign Relations, 1925.

Dymski, Gary A. *The Bank Merger Wave: The Economic Causes and Social Consequences of Financial Consolidation.* Armonk, N.Y.: M.E. Sharpe, 1999.

———. "Discrimination in the Credit and Housing Markets: Findings and Challenges." *Handbook on the Economics of Discrimination* 215 (2005): 220.

———. "Racial Exclusion and the Political Economy of the Subprime Crisis." *Historical Materialism-Research in Critical Marxist Theory* 17, no. 2 (2009): 149-79.

———. "The Theory of Credit-Market Redlining and Discrimination: An Exploration." *Review of Black Political Economy* 23, no. 3 (1995): 37-74.

Dymski, Gary A., Jesus Hernandez, and Lisa Mohanty. "Race, Power, and the Subprime/Foreclosure Crisis: A Mesoanalysis." *Levy Economics Institute of Bard College Working Papers*, no. 669 (2011).

Engel, Kathleen C., and Patricia A. McCoy. *The Subprime Virus : Reckless Credit, Regulatory Failure, and Next Steps.* New York: Oxford University Press, 2010.

Ezorsky, Gertrude. *Racism and Justice : The Case for Affirmative Action.* Ithaca: Cornell University Press, 1991.

Faircloth, Ryan, and Anthony Lonetree. "Officers Disappear from Schools." *StarTribune*, June 22 2020.

Fortune, T. Thomas, ed. *After War Times : An African American Childhood in Reconstruction-Era Florida*. Edited by Daniel R. Weinfeld. Tuscaloosa, Alabama: The University of Alabama Press, 2014.

———. *Black and White: Land, Labor and Politics in the South.* Project Gutenberg, 2005 (1884). Kindle. http://www.gutenberg.org/ebooks/16810.

———. "Civil Rights and Social Privileges." In *T. Thomas Fortune, the Afro-American Agitator : A Collection of Writings, 1880-1928*, edited by Shawn Leigh Alexander,

118-34. Gainesville: University Press of Florida, 2008.

———, ed. *T. Thomas Fortune, the Afro-American Agitator : A Collection of Writings, 1880-1928*. Edited by Shawn Leigh Alexander, New Perspectives on the History of the South. Gainesville: University Press of Florida, 2008.

———. "Who Will Own the Soil in the Future?". In *T. Thomas Fortune, the Afro-American Agitator : A Collection of Writings, 1880-1928*, edited by Shawn Leigh Alexander, 118-34. Gainesville: University Press of Florida, 2008 (1883).

Foucault, Michel. *The Birth of Biopolitics Lectures at the College De France, 1978-79.* Edited by Michel Senellart and Graham Burchell. Houndmills, Basingstoke: Palgrave Macmillan, 2008.

Francis, Megan Ming. *Civil Rights and the Making of the Modern American State.* New York, NY: Cambridge University Press, 2014.

Fraser, Nancy. "Is Capitalism Necessarily Racist? Presidential Address Delivered at the One Hundred Fourteenth Eastern Division Meeting of the American Philosophical Association in Savannah, GA, on January 5, 2018." *Politics/Letters* 1, no. 15 (May 20 2019).

Freund, David M. P. *Colored Property: State Policy and White Racial Politics in Suburban America.* Chicago: University of Chicago Press, 2007.

Gass, Henry. "Do Officers Belong in Schools? Districts Cut Ties, Debate Best Path to Safety." *The Christian Science Monitor*, June 18 2020.

Gilmore, Glenda Elizabeth. *Defying Dixie: The Radical Roots of Civil Rights, 1919-1950.* 1st ed. ed. New York: W.W. Norton & Co., 2008.

Goldstein, Andrew. "2 PPS Board Members Make Call for School Police Transparency." *Pittburgh Post-Gazette*, 25 June 2020.

Golub, Mark. *Is Racial Equality Unconstitutional?* New York, NY: Oxford University Press, 2018.

Goluboff, Risa L. *The Lost Promise of Civil Rights.* Cambridge, Mass.: Harvard University Press, 2007.

Gordon, Leah N. *From Power to Prejudice: The Rise of Racial Individualism in Midcentury America.* Chicago: The University of Chicago Press, 2015.

Gotham, K. F. "Cascading Crises: The Crisis-Policy Nexus and the Restructuring of the U.S. Housing Finance System." *Critical Sociology* 38, no. 1 (Jan 2012): 107-22.

Gotham, Kevin Fox. *Race, Real Estate, and Uneven Development: The Kansas City Experience, 1900-2000.* Albany: State University of New York Press, 2002.

Hanchett, Thomas W. *Sorting out the New South City: Race, Class, and Urban Development in Charlotte, 1875-1975.* Chapel Hill: University of North Carolina Press, 1998.

Haney-López, Ian. "A Nation of Minorities: Race, Ethnicity, and Reactionary Colorblindness." *Stanford Law Review* 59, no. 4 (2006): 985-1064.

Hanna, Maddie. "Call to Remove Police from Philadelphia Schools; Students and Advocates Address Board. District Is Already Eying Role of Police." *Philadelphia Inquirer*, June 19 2020.

Harris, Cheryl I. "Whiteness as Property." *Harvard Law Review* 106, no. 8 (1993): 1707-91.

Heen, Mary L. "Ending Jim Crow Life Insurance Rates." *Northwestern Journal of Law and Social Policy* 4, no. 2 (2009): 360-99.

Helping Consumers Obtain the Credit They Deserve : Hearing before the Subcommittee on Financial Institutions and Consumer Credit of the Committee on Financial Services, 109th Congress. (2005).

Hillier, Amy E. "Redlining and the Home Owners' Loan Corporation." *Journal of Urban History* 29, no. 4 (2003): 394-420.

Hobbs, Tameka Bradley. "Epilogue." In *After War Times: An African American Childhood in Reconstruction-Era Florida*, edited by Daniel R. Weinfeld, 63-68. Tuscaloosa, Alabama: The University of Alabama Press, 2014.

Hoffman, Frederick L. *Race Traits and Tendencies of the American Negro.* Clark, N.J.: Lawbook Exchange, 2004 (1896).

"A Host of New Bills." *Lincoln Semi-Weekly State Journal*, February 28 1893, 3.

Hyman, Louis. *Debtor Nation: The History of America in Red Ink.* Princeton: Princeton University Press, 2011.

Immergluck, Daniel. *Credit to the Community : Community Reinvestment and Fair Lending Policy in the United States.* 2nd ed. London; New York: Routledge, 2015.

———. *Credit to the Community: Community Reinvestment and Fair Lending Policy in the United States.* ME Sharpe, 2004.

———. *Foreclosed: High-Risk Lending, Deregulation, and the Undermining of America's Mortgage Market.* Ithaca: Cornell University Press, 2009.

———. "Two Steps Back: The Dual Mortgage Market, Predatory Lending, and the Undoing of Community Development." Chicago, IL: Woodstock Institute, 1999.

"Insurance: A Statutory Curiosity." *The Independent...Devoted to the Consideration of Politics, Social and Economic Tendencies*, July 24 1884.

"Insurance: Color in Life Insurance." *The Independent...Devoted to the Consideration of Politics, Social and Economic Tendencies*, May 17 1900, 1223.

"Insurance. The Negro as a Life Risk." *The Independent...Devoted to the Consideration of Politics, Social and Economic Tendencies*, February 10 1898, 23.

Jackson, Kenneth T. *Crabgrass Frontier: The Suburbanization of the United States.* New York: Oxford University Press, 1985.

Jackson, Walter A. *Gunnar Myrdal and America's Conscience: Social Engineering and Racial Liberalism, 1938-1987.* Fred W. Morrison Series in Southern Studies. Chapel Hill: University of North Carolina Press, 1990.

Jacquelyn Dowd, Hall. "The Long Civil Rights Movement and the Political Uses of the Past." *The Journal of American History* 91, no. 4 (2005): 1233.

Kendi, Ibram X. *How to Be an Antiracist.* New York: One World, 2019.

Kirp, David L. *Our Town: Race, Housing, and the Soul of Suburbia.* New Brunswick, N.J.: Rutgers University Press, 1995.

Kish, Zenia, and Justin Leroy. "Bonded Life: Technologies of Racial Finance from Slave Insurance to Philanthrocapital." *Cultural Studies* 29, no. 5-6 (2015): 630-51.

Kochhar, Rakesh, Paul Taylor, and Richard Fry. *Wealth Gaps Rise to Record Highs between Whites, Blacks and Hispanics.* Pew Research Social & Demographic Trends. Washington, D.C.: Pew Research Center Washington, DC, 2011.

Krippner, Greta. *Capitalizing on Crisis: The Political Origins of the Rise of Finance.* Cambridge, Mass.: Harvard University Press, 2011.

Kwak, Nancy. *A World of Homeowners: American Power and the Politics of Housing Aid.* Chicago: The University of Chicago Press, 2018.

Landes, Xavier. "How Fair Is Actuarial Fairness?". *Journal of Business Ethics* 128, no. 3 (2015): 519-33.

Lee, Alicia. "Minneapolis Schools and Parks Cut Ties with Police over George Floyd’s Death " *CNN*, June 4 2020.

"The Legislature." *Springfield Republican*, April 12 1884, 8.

"The Legislature: No Discrimination against Colored People." *Boston Daily Advertiser*, April 25 1884, 2.

Levy, Jonathan. *Freaks of Fortune: The Emerging World of Capitalism and Risk in America.* Cambridge, MA: Harvard University Press, 2012.

Lewis, David L. *W.E.B. Dubois: Biography of a Race, 1869-1919.* 1st ed. New York: Owl Books, Henry Holt and Company LLC, 1993.

Li, Weihua, and Humera Lodhi. "The States Taking on Police Reform after the Death of George Floyd." *FiveThirtyEight*, June 18.

Luisa, Piccinno. "Genoa, 1340–1620: Early Development of Marine Insurance." In *Marine Insurance : Orgins and Institutions, 1300-1850*, edited by A. B. Leonard. Palgrave Studies in the History of Finance Series, 24-45. London: Palgrave Macmillan, London, 2015.

Mansfield, Cathy Lesser. "The Road to Subprime Hel Was Paved with Good Congressional Intentions: Usury Deregulation and the Subprime Home Equity Market." *ScL REv.* 51 (1999): 473-587.

Marsico, Richard. *Democratizing Capital: The History, Law, and Reform of the Community Reinvestment Act.* Durham, N.C.: Carolina Academic Press, 2005.

Marton, Janos. "New York City 2021 Candidates Demand Immediate Cuts to NYPD Budget." *Medium*, June 1 2020.

Massachusetts, Commonwealth of, Insurance Department, "Report of the Insurance Commissioner on the Resolve to Revise and Codify the Insurance Laws of the Commonwealth (Chap. 83, Resolves of 1886)," H. 108—20, 1-57, 1st Sess., (1887).

Massey, Douglas S., and Nancy A. Denton. *American Apartheid: Segregation and the Making of the Underclass.* Cambridge, Mass.: Harvard University Press, 1993.

McBride, David. "Fourteenth Amendment Idealism: The New York State Civil Rights Law, 1873–1918." *New York History* 71, no. 2 (1990): 207.

McKernan, Signe-Mary. *Less Than Equal: Racial Disparities in Wealth Accumulation.* Edited by Caroline Ratcliffe, C. Eugene Steuerle, Sisi Zhang and Institute Urban. Washington, DC: Urban Institute, 2013.

Meier, August. *Negro Thought in America, 1880-1915: Racial Ideologies in the Age of Booker T. Washington.* Ann Arbor: The University of Michigan Press, 1963.

Melamed, Jodi. "Racial Capitalism." *Critical Ethnic Studies* Vol.1, no. No. 1 (2015): 76-85.

Metzger, John Thomas. "Social Capitalism in American Cities: Financial Institutions and Community Development." Columbia University, 1999.

Meyer, B. H. "Fraternal Beneficiary Societies in the United States." *American Journal of Sociology* 6, no. 5 (1901): 646-61.

Mills, Charles W. *Black Rights/White Wrongs: The Critique of Racial Liberalism.* Transgressing Boundaries. New York, NY: Oxford University Press, 2017.

———. *From Class to Race: Essays in White Marxism and Black Radicalism.* Lanham, Md.: Rowman & Littlefield, 2003.

———. "'Ideal Theory' as Ideology." *Hypatia* 20, no. 3 (2005): 165-84.

———. "Materializing Race." In *Living Alterities : Phenomenology, Embodiment, and Race*, edited by Emily S. Lee, 18-30. Albany: State University of New York Press, 2014.

———. "Race and Class: Conflicting or Reconcilable Paradigms?". *Social and Economic Studies* 36, no. 2 (1987): 69-198.

———. *Radical Theory, Caribbean Reality: Race, Class and Social Domination.* Kingston, Jamaica: University of the West Indies Press, 2010. Kindle.

———. "Revisionist Ontologies." In *Blackness Visible*, 97-118. Ithaca, N.Y.: Cornell University Press, 2015.

———. "White Supremacy and Racial Justice, Here and Now." In *Social and Political Philosophy*, edited by James P. Sterba, 321-37. London: Routledge, 2001.

———. "Whiteness as a Socio-Political System: A Philosophical Perspective." In *White Out: The Continuing Significance of Racism*, edited by Woody Doane. New York: Routledge, 2003.

Mishel, Lawrence. *The State of Working America.* Economic Policy Institute. Edited by Josh Bivens and Elise Gould. Ithaca, NY: Cornell University Press, 2012.

Mitchell, Michele. *Righteous Propagation: African Americans and the Politics of Racial Destiny after Reconstruction.* Chapel Hill: University of North Carolina Press, 2004.

Monmouth University Polling Institute. "Protestors' Anger Justified Even If Actions May Not Be." edited by Patrick Murray: Monmouth University, 2020.

Morris, Aldon D. *The Origins of the Civil Rights Movement : Black Communities Organizing for Change.* New York; London: Free Press; Collier Macmillan, 1984.

Morris, Monique W. "Countering Discrimination and Mortgage Lending in America: An NAACP Guide for Fair Lending." NAACP, 2010.

Moses, Wilson Jeremiah. *The Golden Age of Black Nationalism, 1850-1925.* Hamden, Conn.: Archon Books, 1978.

Muccino, Gabriele. "The Pursuit of Happyness." Columbia Pictures, 2007.

Murphy, Sharon. *Investing in Life: Insurance in Antebellum America.* Baltimore: Johns Hopkins University Press, 2010.

Nagazumi, Toshiko, David Rose, Amalia NietoGomez, Jason Kiely, and Shana Kotelchuck. "Preying on Neighborhoods: Subprime Mortgage Lending and Chicagoland Foreclosures." Chicago: National Training and Information Center, 1999.

National Community Reinvestment Coalition. "The Broken Credit System: Discrimination and Unequal Access to Affordable Loans by Race and Age. Subprime Lending in Ten Large Metropolitan Areas." Washington, D.C.: NCRC, 2003.

Nebraska, Guy A. Brown, and Hiland H. Wheeler. *The Compiled Statutes of the State of Nebraska, 1881: With Amendments 1882 to 1897, Comprising All Laws of a General Nature in Force July 10, 1897.* 8th ed. Lincoln: State Journal Co., 1897.

"The Negro as an Industrial Risk." *The Independent…Devoted to the Consideration of Politics, Social and Economic Tendencies*, 1902, 2381.

"An Objectionable Law." *The Independent…Devoted to the Consideration of Politics, Social and Economic Tendencies*, July 2 1891, 24.

Oliver, Melvin L., and Thomas M. Shapiro. *Black Wealth/White Wealth: A New Perspective*

on Racial Inequality. 2006.

"On Beacon Hill: Life Insurance Companies' Distinctions against the Negro." *Boston Daily Advertiser*, April 25 1884, 3.

Pager, Devah. *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration.* Chicago: University of Chicago Press, 2007.

Peart, Sandra, and David M. Levy. *The "Vanity of the Philosopher": From Equality to Hierarchy in Postclassical Economics.* Ann Arbor: University of Michigan Press, 2005.

Penn, I. Garland. *The Afro-American Press and Its Editors.* American Negro, His History and Literature. New York: Arno Press, 1969 (1891).

Pennington-Cross, Anthony, Anthony Yezer, and Joseph Nichols. "Credit Risk and Mortgage Lending: Who Uses Subprime and Why?": Arlington, Virginia: Research Institute for Housing America., 2000.

Powell, Michael. "Bank Accused of Pushing Mortgage Deals on Blacks." *New York Times* 7 (2009).

Predatory Lending Practices : Hearing before the Committee on Banking and Financial Services, 106th Cong. (2000).

Predatory Mortgage Lending the Problem, Impact, and Responses: Hearing before the Committee on Banking, Housing, and Urban Affairs, 107th Cong. (2001).

Protecting Homeowners: Preventing Abusive Lending While Preserving Access to Credit : Hearing before the Subcommittee on Financial Institutions and Consumer Credit, 108th Cong. (2003).

Rainey, James, Dakota Smith, and Cindy Chang. "Growing the LAPD Was Gospel at City Hall. George Floyd Changed That." *Los Angeles Times*, June 5 2020.

Ralph, Michael. "'Life… in the Midst of Death': Notes on the Relationship between Slave Insurance, Life Insurance and Disability." *Disability Studies Quarterly* 32, no. 3 (2012).

Randolph, Philip. "The Negro and Economic Radicalism." In *African American Political Thought, 1890-1930: Washington, Du Bois, Garvey, and Randolph*, 301-06. Armonk, N.Y.: M.E. Sharpe, 1996.

Rebonato, Riccardo. *Plight of the Fortune Tellers: Why We Need to Manage Financial Risk Differently.* Princeton, N.J.; Oxford England: Princeton University Press, 2007.

Reich, Robert. "Trump Stokes Divisions with Racism and Rage: And the American Oligarchy Purrs." *The Guardian*, June 14 2020.

Reverse Redlining; Problems in Home Equite Lending: Hearing before the Committee on Banking, Housing and Urban Affairs, 103rd Cong. (1993).

Review of the Voluntary Agreement by Fannie Mae and Freddie Mac : Hearing before the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises of the Committee on Financial Services, U.S. House of Representatives. (2001).

Roberts, William Clare. *Marx's Inferno: The Political Theory of Capital.* Princeton: Princeton University Press, 2017.

Robinson, Cedric J. *Black Marxism: The Making of the Black Radical Tradition.* Chapel Hill, N.C.: University of North Carolina Press, 2000.

Romo, Vanessa. "Amid Protests against Police Violence LA Mayor Eric Garcetti Announces Cuts to LAPD." npr.org, https://text.npr.org/s.php?sId=869242938.

Rothstein, Richard. *The Color of Law: A Forgotten History of How Our Government Segregated America.* New York: Liveright. 2017.

———. "The Making of Ferguson Public Policies at the Root of Its Troubles." Washington: Economic Policy Institute, 2014.

Rugh, Jacob S., Len Albright, and Douglas S. Massey. "Race, Space, and Cumulative Disadvantage: A Case Study of the Subprime Lending Collapse." *Social Problems* 62, no. 2 (May 2015): 186-218.

Rugh, Jacob S., and Douglas S. Massey. "Racial Segregation and the American Foreclosure Crisis." *American Sociological Review* 75, no. 5 (2010): 629-51.

Rutherglen, George. *Civil Rights in the Shadow of Slavery: The Constitution, Common Law, and the Civil Rights Act of 1866.* Oxford U.K.; New York: Oxford University Press, 2013.

Scheessele, Randall M. "1998 HMDA Highlights." In *Housing Finance Working Paper*: Office of Policy Development and Research, HUD, 1999.

Searcey, Dionne, and John Eligon. "Minneapolis Will Dismantle Its Police Force, Council Members Pledge." *New York Times*, June 7 2020.

Shelby, Tommie. *Dark Ghettos: Injustice, Dissent, and Reform.* Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2016.

———. "Racism, Moralism, and Social Criticism." *Du Bois Review* 11, no. 1 (2014): 57-74.

———. *We Who Are Dark : The Philosophical Foundations of Black Solidarity*. Cambridge, Mass.: Belknap Press of Harvard University Press, 2005. Kindle.

Son, High. "Appalled—Here's What Wall Street CEOs Are Saying About the Killing of George Floyd and Protests Rocking U.S. Citites." *CNBC*, June 1 2020.

St George, Donna. "State School Arrest Rate Higher for Black Students." *The Washington Post*, June 25 2020.

Stalson, J. Owen. *Marketing Life Insurance: Its History in America.* Cambridge, Mass.:

Harvard University Press, 1942.

Starr, Frederick. "The Degeneracy of the American Negro." *The Dial, a Semi-monthly Journal of Literary Criticism, Discussion and Information*, January 1 1897.

Stewart, T. McCants. "Counsel to the State League." *The New York Age*, 14 June 1890, 2.

———. "An Industrial Servitude ?" *The New York Age*, March 17 1888.

———. "Insurance Bill Signed." *The New York Age*, April 11 1891.

———. "South Carolina Politics." *The New York Age*, August 30 1890.

Stuart, Guy. *Discriminating Risk: The U.S. Mortgage Lending Industry in the Twentieth Century.* Ithaca, N.Y.: Cornell University Press, 2003.

"The Subprime 25." *The Center for Public Integrity*, May 19 2009.

Subprime Lending: Defining the Market and Its Customers: Hearing before the Subcommittee on Financial Institutions and Consumer Credit of the Committee on Financial Services, 108th Cong. (2004).

Sugrue, Thomas J. *The Origins of the Urban Crisis Race and Inequality in Postwar Detroit.* Princeton Classics. Princeton: Princeton University Press, 2014.

Sullivan, Shannon. "Smadditizin' across the Years: Race and Class in the Work of Charles Mills." *Critical Philosophy of Race* 5, no. 1 (2017): 1-18.

Swan, Robert Joseph. "Thomas McCants Stewart and the Failure of the Mission of the Talented Tenth in Black America, 1880-1923." 346. ProQuest Dissertation Publishing: New York University, 1990.

Taylor, Keeanga-Yamahtta. *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership.* Justice, Power, and Politics. Chapel Hill: University of North Carolina Press, 2019.

Thornbrough, Emma Lou. *T.Thomas Fortune: Militan Journalist.* Chicago: University of Chicago Press, 1972.

Trounstine, Jessica. *Segregation by Design: Local Politics and Inequality in American Cities.* Cambridge, United Kingdom: Cambridge University Press, 2018.

Ture, Kwame, and Charles V. Hamilton. *Black Power: The Politics of Liberation in America.* New York: Random House, 1967.

———. *Black Power: The Politics of Liberation in America: With New Afterwords by the Authors.* Vintage Books, 1992.

United States. Congress. Senate. Committee on Homeland Security and Governmental Affairs. Permanent Subcommittee on Investigations. "Wall Street and the Financial Crisis : Anatomy of a Financial Collapse : Majority and Minority Staff Report." Washington, D.C.: Permanent Subcommittee on Investigations, 2011.

United States. Department of Housing and Urban Development. "Unequal Burden in Chicago: Income and Racial Disparities in Subprime Lending." HUD, 2000.

United States. Federal Housing Administration, "Underwriting Manual: Underwriting Analysis under Title II, Section 203 of the National Housing Act," (1936).

"Untitled." *The Weekly Underwriter* 30, no. 14 (1884): 231.

Valencia, Milton J., and Meghan E. Irons. "Need for Police in the Schools Questioned." *The Boston Globe*, June 17 2020.

Valls, Andrew. *Rethinking Racial Justice.* New York, NY: Oxford University Press, 2018.

Von Eschen, Penny M. *Race against Empire: Black Americans and Anticolonialism, 1937-1957.* Ithaca, NY: Cornell University Press, 1997.

Wasserman, David. "The Concept of Discrimination." In *Encyclopedia of Applied Ethics*, edited by Ruth Chadwick, 805-14: Academic Press, 1998.

"The Week." *The Chronicle: A Weekly Insurance Journal*, 11 June 1885, 298.

Western, Bruce, and Becky Pettit. "Black-White Wage Inequality, Employment Rates, and Incarceration." *American Journal of Sociology* 111, no. 2 (September 2005): 553-78.

White, A. M. "Risk-Based Mortgage Pricing: Present and Future Research." *Housing Policy Debate* 15, no. 3 (2004): 503-31.

Wiggins, Benjamin Alan. "Managing Risk, Managing Race: Racialized Actuarial Science in the United States: 1881-1948." ProQuest Dissertation Publishing: University of Minnesota, 2013.

Witt, John Fabian. *The Accidental Republic: Crippled Workingmen, Destitute Widows, and the Remaking of American Law.* Cambridge, Mass.: Harvard University Press, 2004.

Wynes, Charles E. "T. McCants Stewart: Peripatetic Black South Carolinian." *The South Carolina Historical Magazine* 80, no. 4 (1979): 311-17.

Young, Iris Marion. *Justice and the Politics of Difference.* Princeton, N.J.: Princeton University Press, 2011.

Zaeits, Karina, Janie Hasemann, and Jennifer Borresen. "Protests Lead to Wave of Policing Reform." *USA Today*, June 24 2020.

Zelizer, Viviana A. Rotman. *Morals and Markets: The Development of Life Insurance in the United States.* New York: Columbia University Press, 1979.