

# Black Lines of Credit Matter

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Mehrsa Baradaran, [Jim Crow Credit](#), 9 **UC Irvine L. Rev.** 887 (2019).

Mehrsa Baradaran makes an outstanding contribution to the literature on de jure, systemic racial bias and lays a foundation for reparations in the context of consumer credit in *Jim Crow Credit*. Drawing from and building on her two Harvard U. Press books, *How the Other Half Banks* (2018) and *The Color of Money* (2017), Baradaran documents the systematic subsidization of white borrowers—and thus the creation of the white, suburban middle class—in the New Deal and subsequent 20<sup>th</sup> century government programs that brought us today's home mortgages, credit cards, and predatory lending practices such as payday lending. Bottom line up front: in credit as elsewhere the haves come out ahead. The surprise is how the federal government subsidized this enormous giveaway to create a white, suburban middle class at the expense of urban and African-American communities.

In bumper sticker form, Baradaran's message is that Black lines of credit matter. Just as driving or jogging while Black too often proves fatal, borrowing while Black harms Black lives by imposing financial and other injuries that white borrowers are much less likely to suffer. Perhaps most galling—and akin to criminal defendants funding mass incarceration through fees and fines—is that African Americans taxpayers helped fund the U.S. subsidies to white borrowers via mortgages and later, credit cards. The compound interest resulting from those subsidies explains a good amount of today's income inequality: whites enjoy 10 times the wealth of African-Americans, and measured in quasi-liquid assets like retirement accounts, that inequity jumps to a jaw-dropping 100 times more wealth.<sup>1</sup>

Baradaran flags the relevance of this breach of the social contract for concrete proposals to award damages for it via reparations, but the bulk of her article recites the history that justifies reparation proposals. We need this scholarly work, since at long last reparations are getting serious attention. For example, as much as \$4 billion of the \$1.9 trillion post-COVID stimulus package is slated to pay off the debt of Black farmers as reparations for the U.S. Dept. of Agriculture's past credit discrimination against them.<sup>2</sup> Baradaran tells the story of another credit market debacle involving New Deal and subsequent statutes, agencies, and lender practices.

But before jumping to the fascinating – and appalling – history, a note on law. Entirely different statutory frameworks govern loans involving real property and credit relationships to purchase things and services. They are so different that many of us who teach and research debtor-creditor relations specialize in either “dirt law” regarding real estate finance or “thing law” that involves personal property as collateral or unsecured loans such as credit card debt. Baradaran's article impressively bridges this divide to show readers the system-wide, outrageous patterns of favoritism to white borrowers.

## **A. Federally-Funded Great White Giveaway & Steal from African Americans**

We start with dirt law because subsidized mortgages to help white borrowers purchase homes provided a template for parallel developments in credit card debt in subsequent decades.

### **1. Dirt Law**

Baradaran traces the historic New Deal corrections to market failures in credit markets, providing specific evidence of how they built white supremacy into their very foundations. For example, everyone knows about red-lining, but who knew that the Federal Housing Administration explicitly used dark skin – and foreign birth – as proxies for credit risk. Their maps, Baradaran explains, assigned colors to neighborhoods: green for the lowest credit risk, red for the highest, and blue and yellow in between. But too few realize that the FHA's underwriting manual warned against lending to "inharmonious racial or nationality groups," meaning Blacks and immigrants. Or that years after *Shelley v. Kraemer*<sup>3</sup> struck down restrictive racial covenants the FHA continued to promote the use of restrictive covenants to benefit white borrowers at Black borrowers' expense.

Mortgages from private lenders operated in the shadow of the government give-away. To get the security of federal guaranteed mortgages, lenders tended to avoid redlined neighborhoods. Thus even purportedly private transactions reflected the federal subsidies directed to white borrowers.

Immense consequences flow from these bureaucratic maneuvers, Baradaran explains. Monthly mortgage payments that were cheaper than rent enabled working-class whites to become middle-class. Lily-white suburbs graced with parks, schools, and other amenities followed, as did retail districts that likewise extended low-cost credit to customers. *Jim Crow Credit* painstakingly catalogs this process of how New Deal credit policies socialized loss for white borrowers and privatized their gain, which then enabled them to accumulate wealth to pass along to their boomer children. Also that it happened at the expense of African American families.

The glaring "red" label slapped on to property in wealthy neighborhoods peopled by African-American professionals such as those surrounding Morehouse and Spelman College campuses prevented those professionals from accumulating wealth at the rate of their white counterparts. The only sources of credit were those left over from the bad old days before the Great Depression. Without federal-guaranteed mortgages, African-Americans too often could only purchase shoddier homes through installment contracts with high interest rates. In contrast to protections enjoyed by white borrowers, many or most African-American borrowers merely owned an option to purchase the home, which they could forfeit for missing a single payment. The devaluation of those properties, in turn prevented the accumulation of equity that could fund other life projects, such as a child's education or a business.

## 2. Thing Law

Jim Crow also traces how this pattern played out in other credit markets. New Deal federal subsidies for loans to improve real estate—and thus stimulate the building industry—morphed into the infrastructure of today's credit cards. Before the Depression, installment purchases with high interest rates were the norm until new banking regulations and policies lowered the cost of credit, at least for white borrowers. As with real estate loans, credit-card and finance companies avoided customers in redlined neighborhoods, due to both racism and the greater risks of issuing credit in communities with fragile economic bases due to the devaluation of that real estate due to federal red-lining and other forms of racism.

While white borrowers got used to doing laundry at home with the washing machines purchased with the low-interest loans from retailers and finance companies, Black borrowers were left behind in the much more expensive rent-to-own market. The unconscionable terms of those installment contracts are familiar to anyone who has taught or taken a 1L Contracts class thanks to the canonical case *Williams v. Walker-Thomas*,<sup>4</sup> an injustice that state and federal law has since remedied.<sup>5</sup> But other predations in the form of payday loans and check cashing centers replaced them, as Baradaran's book *How the Other Half Banks* explores in great detail.

Today poor African-American communities, Baradaran explains, are banking deserts. Consequently, African Americans are more likely to obtain payday loans at interest rates of 300%–or even up to 2000%–in staggering comparison to the 10% interest rate on home equity loans.

## **B. Movements to Reveal, Challenge, and Remedy Racial Disparities in Credit**

*Jim Crow Credit* also reveals that resistance to these unjust credit rules played a crucial role of credit in the 20<sup>th</sup> century civil rights movement. The Civil Rights Act of 1964 and the Voting Rights Act of 1965 banned discrimination, but as Baradaran says, “[e]nding credit discrimination was not the same as providing credit.” (P. 904.) They did nothing to provide restitution to African Americans for the unjust gains that systemic subsidies lavished on white borrowers.

She reports that urban riots in the 1960s—such as Watts—were fueled by rage about being “stuck in an ancient debt market while the rest of the country had taken off into the modern world of risk sharing, secondary markets, and large finance companies that all worked to lower the risks and the costs of debt.” (P. 911.) No wonder that media at the time reported rioting crowds shouting “burn the damn records,” and a mother telling grocery store looters, “Don’t grab the groceries, grab the book.” (P. 907.)

The article then explains that in the wake of those riots even politicians who understood the systemic bias failed to rectify that injustice. Instead they again forbade discrimination—this time via the Equal Credit Opportunity Act—and provided mechanisms for giving financial advice to Black borrowers and Black-owned banks. What those communities needed instead was restitution.

*Jim Crow Credit* concludes with a brief discussion of ways that law and policy could do better. First, of course, we must recognize the lopsided subsidies that undergird racial wealth disparities. Then remedy them. The article discusses a handful of possibilities:

- “Follow the red lines” where poor African American communities were denied the stability and wealth accumulation enjoyed by their white suburban counterparts, and implement reforms to facilitate home ownership;
- “Greenline” to lower interest rates by, for example, guarantying mortgages;
- “Shared equity mortgages” or “SEMs” allow private investors such as a non-profit or bank to jointly make mortgage payments and accrue a proportion of home equity alongside the homeowner;
- Vouchers for home purchases, akin to § 8 vouchers in which governments subsidize payments for rental housing; and
- Direct loans from government entities such as the FHA could, as Baradaran says, “fix the problem the FHA itself created.” (Pp. 946-48, quoted language on 948.)

Scholars, litigators, and policy makers all will doubtless rely on *Jim Crow Credit* as they consider reforms like those listed, and also when they litigate inevitable challenges to those reparative efforts. We all owe Baradaran a debt for compiling the detailed history of government subsidies to white property accumulation, and thus providing key tools to right this wrong.

1. Dorothy Brown, **The Whiteness of Wealth** (2021); Carole Pateman & Charles Mills, **Contract & Domination** (2007).
2. Alan Rappeport, [Banks Fight Biden’s \\$4 Billion Plan to Ease Black Farmers’ Debt](#), **N.Y. Times**, May 20, 2021, Pp. A1 & A 17.
3. 334 U.S. 1 (1948).
4. 350 F.2d 445 (D.C. App. 1965).

5. See, e.g., U.C.C. 9-204; FTC Credit Practice Rules 16 C.F.R. §444,1-2 (2012).

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