Just Money Profiles
Mehrsa Baradaran, Co-Editor

Mehrsa Baradaran is a professor of law at the University of California, Irvine School of Law. Baradaran writes about banking law, financial inclusion, inequality, and the racial wealth gap. Her scholarship includes the books *How the Other Half Banks* and *The Color of Money: Black Banks and the Racial Wealth Gap*, both published by the Harvard University Press. The *Color of Money: Black Banks and the Racial Wealth Gap* was awarded the Best Book of the Year by the Urban Affairs Association, the PROSE Award Honorable Mention in the Business, Finance & Management category. Baradaran was also selected as a finalist at the 2018 Georgia Author of the Year Awards for the book in the category of history/biography.

Baradaran has also published articles including “Jim Crow Credit” in the *Irvine Law Review*, “Regulation by Hypothetical” in the *Vanderbilt Law Review,* “It’s Time for Postal Banking” in the *Harvard Law Review Forum*, and “Banking and the Social Contract” in the *Notre Dame Law Review.* Baradaran and her books have received significant national and international media coverage and have been featured in the New York Times, the Atlantic, Slate, American Banker, the Wall Street Journal and Financial Times; on National Public Radio’s “Marketplace,” C-SPAN’s “Washington Journal” and Public Broadcasting Service’s “NewsHour;” and as part of TEDxUGA. She has advised U.S. Senators and Congressmen on policy, testified before the U.S. Congress, and spoken at national and international forums like the U.S. Treasury and the World Bank.

She earned her bachelor’s degree *cum laude* from Brigham Young University and her law degree *cum laude* from NYU, where she served as a member of the *New York University Law Review*.

Banking on Democracy

Author: Mehrsa Baradaran

The financial system is unequal and exclusionary even as it is supported, funded, and subsidized by public institutions. This is not just a flaw in the financial sector; it is a foundational problem for democracy. Across the financial industry, entrepreneurs, regulators, media, and scholars promote the goal of "financial inclusion" or "access to credit." Facebook's Libra, Bitcoin, and fintech providers like Square, PayPal, Venmo, and thousands of other new products or startup companies are launched with the stated aim of increasing financial inclusion. These private companies are joined by the Congress, non-profits, and financial regulators with programs and laws promoting financial inclusion. In fact, financial inclusion and access to credit are among the increasingly rare issues that unite the political left and right. Yet, despite consensus and years of effort, many individuals and communities continue to be excluded from the mainstream financial system, which forces them to resort to high cost payday lenders, check cashers, or other fee-based financial transaction products. The financially disenfranchised pay the most for services that the wealthy and the middle class receive at a subsidized rate. This Article proposes a new model of financial inclusion, which situates issues of access and inclusion as central to the legal design of the financial system. This Article argues that these remedies have failed because the current model of financial inclusion is rooted in a mistaken and incomplete theory of the financial market. "Normals" and "mainstream" credit markets are conceived of simply as "markets," governed by market rules and market dynamics. In contrast, strategies for inclusion or

"access to credit" are viewed as ancillary products, gap-filling, or subsidized add-ons for those who are outside of the credit market. This Article argues that the mainstream market and inclusion strategies are both part of the same financial market, which is itself a product of public policy. Instead of financial inclusion, this Article proposes to reframe the problem as a matter of financial redesign. The design of credit markets is an a priori choice embedded in law and policy that determines the contours and scope of the credit markets, including who is included. Reconceptualizing financial inclusion must thus proceed through democratic means because inclusion and access are a byproduct of institutional design rather than private market decision making.

Mehrsa Baradaran, *Banking on Democracy*, 98 Wash. U. L. Rev. 353 (2020).
Available at: https://openscholarship.wustl.edu/law_lawreview/vol98/iss2/5

Race and Money

Race and Money

Prompt for Discussion

Contributors: Mehrsa Baradaran, Michael O'Malley, Michael Ralph, David M. P. Freund, Destin Jenkins, Peter Hudson, K-

Sue Park

In several historic moments of banking or monetary reform, issues of race were inextricably tied to issues of money. The legacy of institutional segregation continues today. More crucially, the history of money, credit, and banking is implicated in ongoing exclusion and exploitation of vulnerable communities.

Scholars in several fields have explored how the institution of enslavement has shaped American capitalism, monetary debates, credit markets, and banking. Enslavement and its long shadow caused stark and ongoing wealth distortion. The Constitution marked slaves as “articles of commerce” and financial ledgers tracked “property in man” as assets, credit, debt, and monetary value. Between 1820 and the Civil War, banks across the south issued notes with images of slaves printed on the money. The Union won the bloody ground battle thanks to war generals Grant and Sherman, but it also, and perhaps more importantly won the currency war thanks to President Lincoln, Treasury Secretary Salmon P. Chase, and the Supreme Court of the United States. Lincoln’s “greenbacks,” backed by the full faith and credit of the US Treasury (but not backed by gold) enabled the Union victory. In turn, the success of the Union army fortified the new currency. The success of the new fiat currency and the Union soldiers were inextricably linked.

The war over slavery was also a war over the future of the economy, the nature of property rights, and the essentiality of value. By issuing fiat currency, Lincoln opened up a debate about how elastic the money supply might be. Fiat money transparently based money’s worth on the federal government’s determination to take it for value. As Keynes said of legal tender—"the state claimed the right not only to enforce the dictionary but to write it!" Scholars in this roundtable will discuss how those crucial debates affected modern theories about money and value.

The scholars in this roundtable will also discuss the ongoing effects of slavery, Jim Crow, housing segregation, and employment discrimination on the modern economy. In America, each rung on the ladder toward prosperity consisted of bank credit—even more so in the 20th century when homeownership became synonymous with both mortgage credit and prosperity. For Blacks and others, the path toward wealth was closed. It was closed by segregation, government policies, and by realities of finance. In this roundtable, we have invited pre-eminent scholars whose work illuminates core issues at the intersection of money and race. We have asked them to respond to a few questions: How did slavery shape the US monetary, credit, and banking system? How did the economic system and monetary forms shape racial dynamics? What aspects of the modern economic system are influenced by America's racial history? How has America's racial history affected theories of capital, money, or debt? What do you think current debates about the history of capitalism reveal about the future of the field?

Contributions

September 25, 2020
How Did Redlining Make Money?
K-Sue Park, Georgetown Law

July 28, 2020

Currency, Colonialism, and Monetary History from Below
Peter James Hudson, University of California, Los Angeles

July 17, 2020
Finance and Violence
Michael Ralph, New York University

June 15, 2020
Debt and the Underdevelopment of Black America
Destin Jenkins, University of Chicago

June 8, 2020
Money is productive, and racist institutions create money
David M. P. Freund, University of Maryland

May 28, 2020
Money and the Limits to Self Making
Michael O'Malley, George Mason University

May 19, 2020
How the Right Used Free Market Capitalism against the Civil Rights Movement
Mehrsa Baradaran, University of California Irvine

Jim Crow Credit

Mehrsa Baradaran, *University of California Irvine*

The New Deal created a separate and unequal credit market—high-interest, non-bank, installment lenders in black ghettos and low-cost, securitized, and revolving credit card market in the white suburbs. Organized protest against this racialized inequality was an essential but forgotten part of the civil rights movement. After protests and riots drew attention to the reality that the poor were paying more for essential consumer products than the wealthy, the nation's policymakers began to pay attention. Congress held hearings and agencies, and academics issued reports examining the economic situation. These hearings led to new federal agencies and programs, executive actions, as well as several acts of legislation. These Congressional investigations and the theories and explanations emanating from policymakers and academics were the genesis of decades of legislation aimed at supporting minority banks and other institutions. The resulting policy framework is still in effect and includes: the Community Reinvestment Act (CRA), the Community Development Financial Institution Act (CDFIA), as well as several key provisions and mandates regarding minority banks in banking legislation. In this Article, I will argue that the foundational theoretical premise of these laws and policies is flawed. Though policymakers and scholars accurately diagnosed the root causes of the disparate credit market, the solutions did not correspond with the problem and have therefore been ineffective. These laws and policies were not aimed to address the systemic causes of the disparity but only served to treat its symptoms. The misguided focus on small community banking, minority-owned banks, and mission-oriented institutions as a response to structural inequality has been the dominant framework in banking reform.

In analyzing the varied, but theoretically consistent response to lending inequality, this Article also challenges a long-standing banking myth that "small community banking" or "microfinance" is the answer to poverty, specifically for marginalized communities. This idea was the foundational theory of the minority banking industry, the CRA, the CDFIA, and almost every legislative response to credit inequality for the past fifty years. The premise of these laws is that that marginalized communities, having been left out of the dominant banking industry, will pool their resources and collectively lift themselves out of poverty. As such, these laws are rooted in neoliberal and libertarian concepts of banking market even as they have been championed by progressive reformers and community activists. For most policymakers, activists, and scholars, the buzzword is “community empowerment” and they have legislated accordingly. In doing so, they have avoided addressing the root causes of the problem and have shifted the responsibility of a solution to the disenfranchised communities themselves instead of devising comprehensive federal policy solutions. This Article will trace the genealogy of this legislation and offer solutions that will address the root causes of this inequality.

Baradaran, Mehrsa, Jim Crow Credit (May 29, 2019). UC Irvine Law Review, Vol. 9, 2019; University of Georgia School of Law Legal Studies Research Paper No. 2019-18. Available at SSRN: https://ssrn.com/abstract=3395876

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M. Baradaran, How the Right Used Free Market Capitalism against the Civil Rights

Movement

May 19, 2020

Mehrsa Baradaran, University of California Irvine

In order to achieve racial justice in America, we must confront and then thoroughly reject simplistic and ahistorical myths about markets and capitalism. We have mistaken notions that (1) colorblind economic policies can fix vast inequalities created by centuries of explicitly race-based policies and (2) that free markets are an antidote to heavy-handed state policies of economic exploitation and exclusion. More narrowly, the reason that the United States has never significantly contemplated a meaningful program of racial justice is because demands for economic justice have been crushed by myths of self-reliance and neoliberal free market fundamentalism. The most recent and least understood of these political decoys was the Nixon era "black capitalism" program that was used to block meaningful reforms by offering capitalist dogma. These programs linked the Civil Rights coalition's demands for justice with threats of communism in order to hide the history of heavy state intervention that created vast racial inequalities in wealth and income.

The 1968 Kerner Commission Report, which was the closest the US ever got to an official acknowledgement of its history of racial injustice, spoke to the phenomenon of protests and unrest in America's segregated cities. The final report determined that the riots stemmed from poverty, racism, inequality and other social ills, but that the underlying cause was segregation. "Segregation and poverty have created in the racial ghetto a destructive environment totally unknown to most white Americans," the report said. "What white Americans have never fully understood—but what the Negro can never forget—is that white society is deeply implicated in the ghetto. White institutions created it, white institutions maintain it, and white society condones it." The report was an unapologetic excoriation of white society, which the commission deemed guilty not just of racism, but of apathy toward black poverty. The only way to address these injustices, according to the report, was through a robust federal response. Nixon won the 1968 election by promising that he would do no such thing. But first, his campaign had to get the messaging right. Alan Greenspan, who served as Nixon's economic advisor, addressed claims by black activists for reparations in a private campaign memo to candidate Nixon in 1967 called "The Urban Riots of the 1960's." He wrote that capitalism itself was under attack by demands made by black militants and that "ghetto riots have become a rallying cry for an attack upon America's system of free enterprise and individual rights." Greenspan outlined his reasoning:

> *The critical question is, of course, whether the Negroes are correct in claiming that they have been exploited and that their violent reaction is the rational response. There can be little doubt that discrimination has been rampant. However, the charge of exploitation in the sense of value being extracted from the Negroes without their consent for the profit of the whites is clearly false . . . . This distinction between discrimination and exploitation is all the difference in the world.*[1]

In other words, because whites had not profited directly from black misery, reparations should be rejected. Moreover, he underscored in the memo that any capitulation to demands for federal spending in the ghetto was a threat to free enterprise.

Greenspan believed that the cries of exploitation were misguided because black activists had misunderstood capitalism and the natural market of the ghetto, and had erroneously and unfairly blamed whites for exploitation. He was correct when he said that “profit rates in slum areas are doubtless distressingly low considering the risks,” but he erred when he concluded based on that observation that the white community was not gaining any “advantage and profit” and that therefore cries of “injustice” were “erroneous.” He could not see that the same system that discriminated against blacks had brought benefits to whites. Nor did he acknowledge that for blacks who were being crushed by the ghetto debt trap, it could still feel like an “injustice” even though the lenders were not making direct profits. He rejected the liberal notion that “the Negro ghetto must be elevated to the level of affluence of middle-class America” because “this can only be done by massive governmental expenditures.” Instead, he advised Nixon to pursue programs to “help Negroes help themselves.”

In line with the Greenspan-Nixon approach, Milton Freedman used theories and models of free market capitalism (as opposed to the actual economic history) to fight basic anti-discrimination laws in his foundational 1962 book, “Capitalism and Freedom.” The intellectual father of neoliberalism opposed such laws as a violation of free market capitalism. He decried discrimination as a matter of bad taste, but said that Civil Rights laws were an “interference with the freedom of individuals to enter into voluntary contracts with one another.”[2] He compared laws *prohibiting* discrimination to laws *requiring* discrimination—it was all unjustified government intervention. Friedman believed that markets would themselves root out discrimination because it was costly and inefficient. Friedman claimed that anyone who opposed buying goods from black businessmen or employing black employees was expressing an inefficient preference and would therefore pay a higher price for that preference. Theoretically, this was true, but historically it was not. Because the ghetto had cordoned off a segment of risky borrowers, whites actually paid significantly less for goods, credit, and housing. Racial discrimination had not cost whites, but had actually brought many advantages through all-white suburbs, lower competition for lucrative jobs, and, for a time, even labor protections that benefited whites at the expense of blacks.

Friedman, Greenspan and other market capitalists grounded their arguments in economic theory. They were chasing a libertarian vision of the economy, but what they were describing was a hypothetical future—it had no relationship to the actual lived experience of American history. The historical American reality was that blacks had never fully participated in free market capitalism and that whites had benefited from heavy government interventions that had worked to the direct disadvantage of blacks. The arteries of trade and commerce had not flowed freely through the ghetto, at least not in the realm of credit and banking. Credit markets laid atop a federal government apparatus including guarantees, secondary markets, deposit insurance, and federal reserve support. The only places where those forces were not working were inside the ghettos. The ghetto itself had been an unnatural creation of anti-market impositions of racist policies. Indeed, discrimination was incredibly costly, but only to blacks.

The neoliberal faith in capitalism and market efficiency was rooted in an ideal much like the egalitarian principles of the founding documents. They were aspirational faiths, but they were not accurate descriptions of the real world. In theory, it was costly to refuse to buy products from blacks if they were offering the same or lower prices. In reality, whites often refused to associate with blacks at any cost. Besides, even if discrimination did suddenly disappear, the broken markets of the ghetto would not. Discrimination had created macro market forces that were now operating on their own. Yet neoliberal dogma and market fundamentalism demanded adhesion to market theory, which meant an aversion to any and all "government intervention" aimed at black poverty.

The neoliberal right demanded smaller government involvement and spending in all spheres. Without spewing the racial animus of the George Wallace wing of his party, Goldwater, Nixon, Reagan and the rightwing judiciary and Congress opposed Civil Rights laws, integration, and any affirmative racial remedies—all in the name of free market capitalism. Since any redress for past economic exclusion required heavy federal government action, an immediate libertarian backlash began to delegitimize all government action. Conservatives began to demand a bill of rights that guaranteed the right to free use of property, including the right to segregated neighborhoods. The movement could hardly be seen as anything but a direct response to the economic demands of the black movement and the government anti-poverty program. Nixon was not a libertarian—he expanded the federal bureaucracy and created more government agencies than any modern president—but he still opposed government interference of any kind when it came to integration or anti-poverty measures. Republican strategist Lee Atwater gave away the playbook in a 1981 interview: "You start out in 1954 saying nig***, nig***, nig***. By 1968, you can't say nig*** — that hurts you, backfires. So you say stuff like, uh, forced busing, states' rights, and all that stuff, and you're getting so abstract. Now, you're talking about cutting taxes, and all these things you're talking about are totally economic things and a byproduct of them is, blacks get hurt more than whites…”

The theory of economic dogma which James Kwak has called “Economism” began to be adhered to like a religious dogma and used to fight each and every government intervention to remedy past sins. Economism even provided a new justification for stark wealth inequality and exploitation. Inequality along racial lines has been a constant on the American scene, but different eras have justified it with different myths. Christianity was corrupted to hold that white men had a divine right—even duty—to subjugate and enslave blacks. When religious theory fell out of favor, social Darwinism and skull measurements held that blacks were an inferior species who had lost the evolutionary race and thus their subjugation was nature’s will. Now, economic theory held that “the free market” decreed that blacks hold the bottom rung because, for example, it was the laws of supply and demand that caused blacks to pay more for credit, the market that determined how much their labor was worth, and that integration was anti-market. Any effort to change these markets were delegitimized and labeled as harmful government interference with what President Regan called “the magic of the marketplace.” And just as “God’s will” was difficult to challenge in the 1800s, so too was free market economic theory in the 1960s, lest one be labeled a heretic or a communist. For the ascendant libertarians that were taking hold of American politics, the only acceptable remedy for a history of exclusion was black capitalism. But what these white policymakers surely meant by black capitalism was capitalism only for blacks. Government intervention in markets had been the norm, as were government-imposed Jim Crow laws. Capitalism had not created the ghetto and black poverty—racist laws and state intervention in the markets had created both. There had never been free market capitalism for blacks. After years of exclusion, Jim Crow, segregation, and the deviant markets these state interventions had created, the Nixon administration was actually proposing that maintaining that segregated market was the remedy. That somehow by attaching the word “black” to “capitalism” would remedy past wrongs. In order to achieve racial justice, we must offer economic remedies that adequately address a long history of exclusion. And in order to do that, we must confront and reject simplistic and ahistorical models of Capitalism.

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[1] *See* Letter from Alan Greenspan, Chairman, Townsend-Greenspan & Co., to Richard Nixon, Republican Presidential Candidate, on the Urban Riots of the 1960s (Sept. 26, 1967) (on file with the Richard Nixon Presidential Library).

[2] *See* Milton Friedman, Capitalism and Freedom 109-15 (Chicago University Press, 1962).

Senate Testimony of Mehrsa Baradaran on Cryptocurrency & Financial Inclusion

Author: Mehrsa Baradaran

In this testimony before the Senate Committee on Banking, Housing and Community Affairs, Mehrsa Baradaran provides perspective on the cryptocurrency industry’s ambitions with regard to financial inclusion for low income Americas as well as its place in the banking regulatory landscape.

TESTIMONY OF MEHRSA BARADARAN, PROFESSOR OF LAW, UNIVERSITY OF CALIFORNIA IRVINE SCHOOL OF LAW, BEFORE THE UNITED STATES SENATE COMMITTEE ON BANKING, HOUSING AND COMMUNITY AFFAIRS, JULY 30, 2019

Available at: https://www.banking.senate.gov/imo/media/doc/Baradaran%20Testimony%207-30-19.pdf

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MDM 2018 Keynote: The Color of Money: Banking and Racial Inequality

In the American tradition, commercial banking claimed public support in exchange for delivering public services. It has become increasingly clear that those services are both failing the poor and distributing resources, including access, authority, profits, and credit, along lines of race.

Speaker: Mehrsa Baradaran – University of Georgia School of Law