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The Wealth Gap and the Racial Disparities in the Startup Ecosystem

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THE WEALTH GAP AND THE RACIAL DISPARITIES IN THE STARTUP ECOSYSTEM

LYNNISE E. PHILLIPS PANTIN*

Although much attention has been given to structural inequality as it manifests in the criminal justice context, little has been said about economic inequality as it relates to the startup ecosystem. This Article details how the historic creation of the wealth gap affects entrepreneurship, highlighting how the wealth gap adversely impacts entrepreneurs of color. Entrepreneurship is a compelling solution to wealth inequality, but wealth inequality can be an impediment to success in entrepreneurship. This Article explains how the United States' history of bolstering wealth creation for some, while inhibiting wealth creation for people of color, matters for understanding the startup ecosystem today. This Article describes how access to traditional and innovative sources of capital raising perpetuates the racial wealth gap, and this Article makes concrete proposals for addressing these shortcomings.

* Clinical Associate Professor of Law and Director, Entrepreneurship & Innovation Clinic, Boston College Law School. This Article was presented at the 2016 New England Clinical Conference at Boston University School of Law, the 2017 Eleventh Annual Lutie A. Lytle Black Women Law Faculty Writing Workshop at the University of Michigan College of Law, and the 2017 Clinical Law Review Writers' Workshop at New York University Law School. I thank the facilitators and participants at each workshop for their insightful comments and suggestions. For additional helpful comments and suggestions, I would like to thank Alina Ball, Ted De Barbieri, Jennifer Fan, Bernice Grant, Dan Kanstroom, Jaime Lee, Paul Tremblay, Catherine Wells, and Erika Wood. For truly exceptional research assistance, I thank Chris Cataldo, Amani Kancey, and Ji-Su Park.

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INTRODUCTION

In the United States, racial disparity has manifested a dramatic wealth gap along racial lines.¹ For example, for every dollar that a White household had in 2011, the median Black American household had roughly seven cents.² This wealth gap exists across the demographics of age, marital status, education, and income.³ By 2013, the average wealth of White families was over \$500,000 higher than the average wealth of Black American families (\$95,000) and of Latino families (\$112,000).⁴ In 2016, White families on average had seven times the wealth of Black American families and five times the wealth of Latino families.⁵ For Black Americans specifically, economists estimate that it would take 228 years to acquire the amount of wealth that the average White American possesses today.⁶ Wealth, often referred to as net worth, means the resources that individuals or families have at their disposal for emergencies, for investment purposes, to pay for college, or on hand for future use. Wealth is calculated by taking the total market value of all assets (e.g., financial assets such as bank accounts, stocks, bonds, retirement accounts, and non-financial assets, such as homes and vehicles) owned by an individual, entity, or community and then subtracting the debts (e.g., mortgages, loans, credit card debt, and family loans).

In the context of entrepreneurship, wealth is especially important because it impacts entrepreneurship in two ways. First, entrepreneurs use their own wealth to finance their startup venture. Entrepreneurs draw upon that wealth to

1. Thomas W. Mitchell, *Growing Inequality and Racial Economic Gaps*, 56 HOW. L.J. 849, 852 (2012); see also MELVIN L. OLIVER & THOMAS M. SHAPIRO, *BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY* (10th Anniversary ed. 2006). The gap in wealth between races remains large—seven times greater than the gap in income. SIGNE-MARY MCKERNAN ET AL., URBAN INST., *NINE CHARTS ABOUT WEALTH INEQUALITY IN AMERICA* (2017), <http://apps.urban.org/features/wealth-inequality-charts> [<https://perma.cc/D54P-3J9D>].

2. REBECCA TIPPETT ET AL., CTR. FOR GLOB. POLICY SOLS., *BEYOND BROKE 15* (2014), http://globalpolicysolutions.org/wp-content/uploads/2014/04/Beyond_Broke_FINAL.pdf [<https://perma.cc/QE65-RDT6>]; OLIVER & SHAPIRO, *supra* note 1, at 204.

3. TATJANA MESCHEDE ET AL., *WEALTH INEQUALITIES IN GREATER BOSTON: DO RACE AND ETHNICITY MATTER?* 6, 16 (2016), <https://www.bostonfed.org/publications/community-development-discussion-paper/2016/wealth-inequalities-in-greater-boston-do-race-and-ethnicity-matter.aspx> [<https://perma.cc/E4N9-9HZC>].

4. MCKERNAN ET AL., *supra* note 1.

5. *Id.*; see, e.g., Jesse Bricker et al., *Changes in U.S. Family Finances from 2010 to 2013: Evidence from the Survey of Consumer Finances*, FED. RES. BULL., Sept. 2014, at 1, 4, <https://www.federalreserve.gov/pubs/bulletin/2014/pdf/scf14.pdf> [<https://perma.cc/9WKW-LJPM>].

6. DEDRICK ASANTE-MUHAMMED ET AL., INST. FOR POLICY STUDIES, *THE EVER-GROWING GAP: WITHOUT CHANGE, AFRICAN-AMERICAN AND LATINO FAMILIES WON'T MATCH WHITE WEALTH FOR CENTURIES 5* (2016), http://www.ips-dc.org/wp-content/uploads/2016/08/The-Ever-Growing-Gap-CFED_IPS-Final-2.pdf [<https://perma.cc/4MGB-DE3T>].

capitalize a business, thereby accumulating more wealth.⁷ Second, the amount of wealth possessed by an entrepreneur affects her ability to access external sources of financial capital.⁸ Hence, the racial wealth gap has led to a disparity in entrepreneurship among White entrepreneurs and entrepreneurs of color.⁹

The recent Great Recession highlighted some of the disparity in wealth among the U.S. population. The Great Recession was spurred by the collapse of Lehman Brothers, runs on mutual funds and other financial institutions that caused credit spreads to skyrocket and key sources of credit to dry up and burst the \$8 trillion housing bubble.¹⁰ The loss of consumer spending combined with the chaos in the financial markets resulted in massive job loss, decreases in income and wealth, and an increase in poverty.¹¹ As a result of the Great Recession, the United States saw the most dramatic employment contraction since the Great Depression.¹² The crash of the housing market and the decline in the stock market precipitated a decline in overall family wealth.¹³

The Great Recession exacerbated existing disparities because it brought about sharp declines in wealth among families of color, particularly as compared to their White counterparts.¹⁴ However, the Great Recession did not create the racial wealth gap.¹⁵ Rather, this gap exists because of the multi-centuries-long

7. There is a direct correlation between the revenues of a business and the wealth of its owner. ROBERT W. FAIRLIE & ALICIA M. ROBB, *RACE AND ENTREPRENEURIAL SUCCESS: BLACK-, ASIAN-, AND WHITE-OWNED BUSINESSES IN THE UNITED STATES* 81, 83 (2008).

8. Emily Fetsch, *Does Racial Wealth Disparity Hinder Entrepreneurship?*, EWING MARION KAUFFMAN FOUND.: GROWTHOLOGY (Jan. 21, 2016), <http://www.kauffman.org/blogs/growthology/2016/01/does-racial-wealth-disparity-hinder-entrepreneurship> [https://perma.cc/CM2X-323G].

9. *Id.* There is a distinct difference in the success of Black businesses compared to those of White businesses. See e.g., Robert W. Fairlie & Alicia M. Robb, *Why Are Black-Owned Businesses Less Successful than White-Owned Businesses? The Role of Families, Inheritances, and Business Human Capital*, 25 J. LAB. ECON. 289 (2007).

10. FIN. CRISIS INQUIRY COMM'N, *THE FINANCIAL CRISIS INQUIRY REPORT* 233 (2011), http://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf [https://perma.cc/4D93-NTRB]; *The Great Recession*, STATE WORKING AM., <http://stateofworkingamerica.org/great-recession> [https://perma.cc/UN4P-2F8F].

11. *The Great Recession*, *supra* note 10; see also FIN. CRISIS INQUIRY COMM'N, *supra* note 10, at xvi, 4. Officials estimate that the Great Recession lasted from December 2007 to June 2009. *Id.*

12. *The Great Recession*, *supra* note 10.

13. *Id.*

14. See SIGNE-MARY MCKERNAN ET AL., URBAN INST., *LESS THAN EQUAL: RACIAL DISPARITIES IN WEALTH ACCUMULATION* 2–3 (2013), <https://www.urban.org/sites/default/files/publication/23536/412802-less-than-equal-racial-disparities-in-wealth-accumulation.pdf> [https://perma.cc/2SBL-Z524] (finding that families of color were disproportionately affected by the recession).

15. See Anne Lowrey, *Racial Wealth Gap Widened During Recession: Wealth Gap Among Races Has Widened Since Recession*, N.Y. TIMES (Apr. 28, 2013), <http://www.nytimes.com/2013/04/29/business/racial-wealth-gap-widened-during-recession.html?mtref=undefined&gwh=938C74CC315C5E96E592C70BCAAF66FE&gwt=pay> [https://perma.cc/Q89B-3NUQ]; Gillian B.

history of U.S. government-sanctioned promotion of White American wealth on one end of the spectrum and discrimination against communities of color, particularly Black Americans, on the other.¹⁶

President Obama took several actions to fix the economic crisis, repair the financial systems, and stabilize the housing market, which plummeted in the wake of the Recession. Entrepreneurship and job creation were both key parts of the government's economic recovery strategy.¹⁷ In January 2011, President Obama launched the Startup America Initiative by rolling out a series of entrepreneurship-focused initiatives.¹⁸ In a speech announcing the initiatives, President Obama stated, "Entrepreneurs embody the promise of America: the idea that if you have a good idea and are willing to work hard and see it through, you can succeed in this country. And in fulfilling this promise, entrepreneurs also play a critical role in expanding our economy and creating jobs."¹⁹

The Obama Administration and its economic advisors subscribed to entrepreneurship theory.²⁰ This is the idea that entrepreneurship is a viable means of economic development because it facilitates new businesses, creates jobs, and fosters innovation by creating new products and services.²¹ In a speech at the 2016 Global Entrepreneurship Summit at Stanford University, President Obama acknowledged the importance of entrepreneurship with respect to job creation:

White, *The Recession's Racial Slant*, ATLANTIC (June 24, 2015), <https://www.theatlantic.com/business/archive/2015/06/black-recession-housing-race/396725/> [<https://perma.cc/3GV5-EML9>]. The wealth gap expands during economic downturns. See generally CHAD STONE ET AL., CTR. ON BUDGET & POLICY PRIORITIES, A GUIDE TO STATISTICS ON HISTORICAL TRENDS IN INCOME INEQUALITY 8–9 (2017), <http://www.cbpp.org/research/poverty-and-inequality/a-guide-to-statistics-on-historical-trends-in-income-inequality> [<https://perma.cc/R7PJ-HAWB>].

16. ASANTE-MUHAMMED ET AL., *supra* note 6, at 16–17.

17. *Startup America*, OBAMA WHITEHOUSE.GOV, <https://obamawhitehouse.archives.gov/economy/business/startup-america> [<https://perma.cc/3W3A-U29Z>].

18. *Id.*

19. President Barack Obama, Announcing Startup America Initiative (Jan. 31, 2011).

20. See, e.g., *Startup America*, *supra* note 17. Entrepreneurship theory reflects the American sense of rugged individualism and self-determination and posits that entrepreneurship or business development is a mechanism for wealth accumulation and revitalization of economies. See Scott L. Newbert, *Realizing the Spirit and Impact of Adam Smith's Capitalism Through Entrepreneurship*, 46 J. BUS. ETHICS 251 (2003) for a brief summary of entrepreneurship theory and his argument that "by engaging in the capitalist system with the spirit and the impact Adam Smith outlined in both *The Wealth of Nations* and *The Theory of Moral Sentiments*, today's entrepreneurs are promoting an effective, morally intended system of economic activity." *Id.* at 251.

21. See Mark Casson & Nigel Wadeson, *Entrepreneurship and Macroeconomic Performance*, 1 STRATEGIC ENTREPRENEURSHIP J. 239, 239 (2007); see also ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS (Edwin Cannan ed., Univ. of Chi. Press 1977) (1776). "Economists since Adam Smith (1776) have emphasized that entrepreneurs spur improvements in living standards." Ross Levine & Yona Rubinstein, *Smart and Illicit: Who Becomes an Entrepreneur and Do They Earn More?*, 132 Q. J. ECON. 963, 963 (2017).

When people can start their own businesses, it helps individuals and families succeed. It can make whole communities more prosperous and more secure. It offers a positive path for young people seeking the chance to make something of themselves, and can empower people who have previously been locked out of the existing social order—women and minorities, others who aren't part of the “old boys” network—give them a chance to contribute and to lead.

....

And entrepreneurship is what gives people like you a chance to fulfill your own dreams and create something bigger than yourselves.²²

Entrepreneurship theory promotes entrepreneurship as a wealth-building strategy. Proponents believe that entrepreneurship—a form of economic opportunity toward building wealth—can positively affect the disparity in economic well-being and improve economic development in neighborhoods.²³

This Article critiques entrepreneurship theory as a viable strategy toward wealth accumulation because it fails to take into account the fundamental role of the wealth gap. While “[e]ntrepreneurship holds out the tantalizing promise that low-income businesspeople could bootstrap themselves into successful enterprises that would contribute new resources to the economy,”²⁴ the wealth gap, which is the result of government-sanctioned exclusionary policies that caused economic disparity for people of color, cannot be overcome solely by the promotion of entrepreneurship. While laudable steps have been taken to support entrepreneurship and democratize the entrepreneurial ecosystem through the implementation of crowdfunding, isolated regulation such as the Jumpstart Our Business Startups (“JOBS”) Act and policies such as the Startup America Initiative will do little to address the widening racial wealth gap, which has grave effects on this country’s entrepreneurial ecosystem.²⁵ The widening racial wealth gap exists because of an unresolved legacy of racism and discrimination, which adversely impacts entrepreneurs of color. Such entrepreneurs lack access to financial and institutional capital for entrepreneurial ventures and also lack

22. See President Barack Obama, Remarks by President Obama and Conversation with Mark Zuckerberg and Entrepreneurs at GES 2016 (June 24, 2016), <http://www.ges2016.org/press-releases/2016/6/24/remarks-by-president-obama-and-conversation-with-mark-zuckerberg-and-entrepreneurs-at-the-global-entrepreneurship-summit> [<https://perma.cc/BFQ6-EEX8>].

23. See William D. Bradford, *The “Myth” That Black Entrepreneurship Can Reduce the Gap in Wealth Between Black and White Families*, 28 ECON. DEV. Q. 254, 254 (2014); see also Joyce Klein, *Why Business Ownership Matters in Closing the Racial Wealth Gap*, ASPEN INST. (Nov. 10, 2015), <https://www.aspeninstitute.org/blog-posts/why-business-ownership-matters-closing-racial-wealth-gap> [<https://perma.cc/T87F-P6ZD>]; Levine & Rubinstein, *supra* note 21, at 963.

24. Rashmi Dyal-Chand & James V. Rowan, *Developing Capabilities, Not Entrepreneurs: A New Theory for Community Economic Development*, 42 HOFSTRA L. REV. 839, 852 (2013).

25. Entrepreneurial ecosystem or startup ecosystem is a metaphor for promoting entrepreneurship as an economic development strategy. *E.g.*, Daniel Isenberg, *What an Entrepreneurship Ecosystem Actually Is*, HARV. BUS. REV. ENTREPRENEURSHIP (May 12, 2014), <https://hbr.org/2014/05/what-an-entrepreneurial-ecosystem-actually-is> (last visited Feb. 9, 2018).

the intergenerational wealth necessary to scale business ventures. This Article explains how traditional and innovative sources of capital raising perpetuate the racial wealth gap, and the Article makes concrete proposals for addressing these shortcomings.

The Article proceeds in four parts. Part I surveys the current entrepreneurial landscape, providing a taxonomy of founders, companies, and investors. Part II details the origin of the racial wealth gap, which laid the foundation for the disparity in the current entrepreneurial ecosystem. Part III critiques entrepreneurship theory as a strategy to level the playing field and describes the barriers faced by founders related to capital raising in order to build and grow a venture. Part IV offers recommendations and suggestions toward creating a regulatory framework that attempts to address structural inequality as it relates to economic inequity, capital-raising, and entrepreneurship.

I. THE ENTREPRENEURIAL ECOSYSTEM

Entrepreneurship is the foundation for the American dream.²⁶ For generations, young men and women have started with a great idea, enthusiasm, and hard work, and have built their ideas into thriving businesses.²⁷ The political leadership of both parties proclaims support for entrepreneurship and the policies that support it.²⁸ In a speech at the 2015 Global Entrepreneurship Summit in Nairobi, Kenya, President Obama underscored the promise of entrepreneurship:

Entrepreneurship means ownership and self-determination, as opposed to simply being dependent on somebody else for your livelihood and your future. Entrepreneurship brings down barriers between communities and cultures and builds bridges that help us take on common challenges together.²⁹

26. See Jon Meacham, *Keeping the Dream Alive*, TIME (June 21, 2012), http://content.time.com/time/specials/packages/article/0,28804,2117662_2117682,00.html [https://perma.cc/QZ3Z-MTBS].

27. See generally Jason Wiens, *The Importance of Young Firms for Economic Growth*, EWING MARION KAUFFMAN FOUND. (Sept. 14, 2015), http://www.kauffman.org/~media/kauffman_org/resources/2014/entrepreneurship%20policy%20digest/september%202014/entrepreneurship_policy_digest_september2014.pdf (last visited Feb. 9, 2018).

28. See Meacham, *supra* note 26. The JOBS Act is evidence of the bipartisan support for entrepreneurship. See Scott Gerber, *The JOBS Act Signing: A Giant Step for Entrepreneurship in America*, TIME (Apr. 6, 2012), <http://business.time.com/2012/04/06/the-jobs-act-signing-a-giant-step-for-entrepreneurship-in-america/> [https://perma.cc/WD9Z-546C]; see, e.g., Jumpstart Our Business Startups Act, Pub. L. No. 112–106, 126 Stat. 306 [hereinafter JOBS Act].

29. See President Barack Obama, Remarks at the Global Entrepreneurship Summit (July 25, 2015), <https://ng.usembassy.gov/remarks-president-obama-global-entrepreneurship-summit-july-25-2015/> [https://perma.cc/K989-HC97].

Yet, even as we see the value and contribution of entrepreneurs to the economy,³⁰ the American dream remains out of reach for many Americans, particularly for entrepreneurs of color, because of the legacy of past unfair treatment that leads to obstacles to receiving financing and raising investment capital for their business.³¹

A. *The Face of Entrepreneurship*

The entrepreneur is one of the most celebrated and canonized characters in American culture.³² Heralded as real-life superheroes, entrepreneurs get credit for being change makers.³³ Entrepreneurs are credited with providing jobs, building wealth, driving economic growth,³⁴ and spurring innovation. Further, entrepreneurs embody the American values of hard work and self-determination.³⁵

An entrepreneur can span from a Steve Jobs-like figure to a New York City corner grocer.³⁶ An entrepreneur is the individual behind the small business that pushes the economy forward.³⁷ Put simply, an entrepreneur is a person who

30. *Entrepreneurship and the U.S. Economy*, BUREAU LAB. STAT., <https://www.bls.gov/bdm/entrepreneurship/entrepreneurship.htm> [<https://perma.cc/XE49-3Z7C>].

31. Black entrepreneurs, for example, capitalize their startup ventures at much lower levels than do White entrepreneurs. *See, e.g.*, FAIRLIE & ROBB, *supra* note 7. Robert Fairlie and Alicia Robb found that differences in startup capital are one of the biggest factors in the disparities in entrepreneurial success; lower levels of startup capital explain much of the difference between the success rates of Black and White businesses. *Id.* at 81–84.

32. *See generally* Noliwe A. Rooks, *The Myth of Bootstrapping*, TIME MAG. (Sept. 7, 2012), <http://ideas.time.com/2012/09/07/the-myth-of-bootstrapping/print/> [<https://perma.cc/D63ZQN-DA>]. The Horatio Alger myth, a classic American success story made popular by the novels of Horatio Alger, Jr., is a story that includes a character arc that follows the character from rags to riches. *Id.*

33. *See, e.g.*, *Elon Musk, a Serial Entrepreneur*, N.Y. TIMES, <https://www.nytimes.com/interactive/2016/07/25/business/elon-musks-companies-spacex-telsa-solarcity.html> [<https://perma.cc/5DJW-753Y>] (last updated Dec. 5, 2016) (comparing Elon Musk to the superhero Iron Man).

34. Ed Sappin, *7 Ways Entrepreneurs Drive Economic Development*, ENTREPRENEUR (Oct. 20, 2016), <https://www.entrepreneur.com/article/283616> [<https://perma.cc/5BHQ-8E35>].

35. *See* David E. Pozen, *We Are All Entrepreneurs Now*, 43 WAKE FOREST L. REV. 283, 285–87 (2008).

36. Throughout this Article, I use the terms “entrepreneur” or “founder” interchangeably to refer to owners of startup businesses. “Entrepreneur of color” is also used throughout this Article. I take a very global perspective on the phrase “of color.” The term “entrepreneur of color” may include any founder who is a part of the African diaspora, Asian diaspora, and Latin and Native American diaspora. Much of the focus of entrepreneurs of color is on Black American entrepreneurs, because the most data to date is collected on Black American entrepreneurs. Thus, this Article focuses heavily on Black entrepreneurs and their White counterparts.

37. The United States Small Business Administration Office of Advocacy defines a small business as an independent business having fewer than 500 employees. *See Frequently Asked Questions*, U.S. SMALL BUS. ADMIN. OFF. ADVOC. (July 20, 2016), <https://www.sba.gov/advocacy/frequently-asked-questions-about-small-business> (last visited Feb. 9, 2018).

starts a business and is willing to risk loss in order to make money.³⁸ According to Professor Emeritus Howard Stevenson of Harvard Business School, entrepreneurship “is a management style focused on the pursuit of opportunity without regard to resources currently controlled.”³⁹

Entrepreneurs are typically White, male, and middle class with some college education.⁴⁰ They tend to be married with a working spouse.⁴¹ Investors in early stage businesses tend to also be primarily White and male.⁴² Eleven percent of U.S. households own a business.⁴³ Additionally, in 2005, approximately thirteen percent of people in the United States were in the process of starting a business.⁴⁴

Entrepreneurship is a key contributor to the U.S. economy. According to an Educational Policy Brief from the Ewing Marion Kauffman Foundation, “New businesses account for nearly all net new job[s] create[d] and almost [twenty percent] of gross job creation. . . . Companies less than one year old have created an average of 1.5 million jobs per year over the past three decades.”⁴⁵

While popular wisdom⁴⁶ suggests that a founder of a high-growth venture⁴⁷ may be considered a “typical” entrepreneur, data shows that a typical

38. *Entrepreneur*, MERRIAM-WEBSTER ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/entrepreneur> (last visited Mar. 9, 2018).

39. JON BURGSTONE & BILL MURPHY JR., *BREAKTHROUGH ENTREPRENEURSHIP: THE PROVEN FRAMEWORK FOR BUILDING BRILLIANT NEW BUSINESSES* 156 (2012).

40. SCOTT A. SHANE, *THE ILLUSIONS OF ENTREPRENEURSHIP: THE COSTLY MYTHS THAT ENTREPRENEURS, INVESTORS, AND POLICY MAKERS LIVE BY* 41 (2008).

41. *Id.*

42. Richard Kerby, *Why Are There So Few Black Investors?*, TECHCRUNCH (Mar. 10, 2015), <https://techcrunch.com/2015/03/10/why-are-there-so-few-black-investors> [https://perma.cc/N666-E6LA]. TechCrunch examined nearly 2000 investors at over 200 firms and found that only 1.5% of investment team members were Black. *Id.* According to data drawn from 3.3 million Kickstarter contributors from around the world in 2014, 64% were male, 50.5% were college educated, and the majority earned less than \$50,000 a year on average. *Infographic: Unlocking the Demographics of Crowdfunding*, PWC DIGITAL PULSE (Apr. 7, 2016), https://www.digitalpulse.pwc.com.au/infographic-crowdfunding-kickstarter/?doing_wp_cron=1476312277.8832240104675292968750 [https://perma.cc/64XJ-W7PZ].

43. SHANE, *supra* note 40, at 3.

44. *Id.* at 39.

45. Wiens, *supra* note 27.

46. For example, popular television shows such as *Silicon Valley* and *Shark Tank*, which depict founders of startups looking to grow fast and have a successful financial exit. *See Shark Tank*, ABC (2009); *Silicon Valley*, HBO (2014).

47. Within the startup context, early stage businesses can be categorized generally into two types of ventures: high-growth potential and low-growth potential. A high-growth venture is a business that has a scalable business model. High-growth businesses are typically actual companies that are independent legal entities. They are created to attract investment and to grow and deliver investment returns. A low-growth potential venture is generally an *everyday* small business. It is generally not a particularly innovative, tech-driven business, has no plans to grow, and generates revenue primarily to support its founders who are trying to, in contrast to founders of high-growth ventures, make a living, not investment returns. Most startups fall into the latter category. Low-

entrepreneur is a sole proprietorship with zero employees and approximately \$100,000 in annual revenue with little or no opportunity for growth or capability to hire employees.⁴⁸

B. *Entrepreneurship Among Founders of Color*

Rates of entrepreneurship are lower for people of color than for others.⁴⁹ Not only are people of color less likely to own startups than their White counterparts, but, when they do, the average value of their business is significantly lower than the average value of ventures with White owners.⁵⁰ Despite the fact that rates of entrepreneurship are lower, entrepreneurship among people of color is on the rise.⁵¹ Black women are the fastest growing group of female entrepreneurs.⁵² The rates of entrepreneurship are on the rise, but entrepreneurs of color are not having the same financial success at raising money within the entrepreneurial ecosystem as their White cohort.

Having given context to the face of entrepreneurship and illustrated the differences and disparity between White entrepreneurs and their counterparts of

growth businesses are low-tech, modest businesses that are commonly set up as sole proprietorships.

48. SHANE, *supra* note 40, at 4, 7, 65, 117.

49. *See Race*, EWING MARION KAUFFMAN FOUND.: STATE OF THE FIELD, <http://www.kauffman.org/microsites/state-of-the-field/topics/background-of-entrepreneurs/demographicsrace#litref12> [<https://perma.cc/LKU5-2BBK>]; Fetsch, *supra* note 8. For example, Black people are 13% of the population in the United States, are 7.1% of businesses, and produce .5% of business revenue. *Race*, *supra*; *see also* Bradford, *supra* note 23, at 5.

50. KASEY WIEDRICH ET AL., CORP. FOR ENTER. DEV., THE STEEP CLIMB TO ECONOMIC OPPORTUNITY FOR VULNERABLE FAMILIES 9 (2016), <https://www.issuelab.org/resource/the-2016-assets-and-opportunity-scorecard-the-steep-climb-to-economic-opportunity-for-vulnerable-families.html> (last visited Feb. 9, 2018). On average, ventures with White owners are worth nearly three times more than the average minority-owned business. *Id.*

51. ALGERNON AUSTIN, CTR. FOR GLOB. POLICY SOLS., THE COLOR OF ENTREPRENEURSHIP: WHY THE RACIAL GAP AMONG FIRMS COST THE U.S. BILLIONS 7 (2016), <http://globalpolicysolutions.org/report/color-entrepreneurship-racial-gap-among-firms-costs-u-s-billions/> [<https://perma.cc/AGV2-GBYS>]. Nearly all entrepreneur-of-color groups have experienced growth in the number of their businesses from 2007–2012. *Id.* Firms owned by Black men have experienced a decline in numbers, but these firms had the second highest growth rate in average annual sales. *Id.* at 3.

52. *See* NIELSON CO., DIVERSE INTELLIGENCE SERIES 2017: AFRICAN-AMERICAN WOMEN: OUR SCIENCE, HER MAGIC 53 (2017), <http://www.nielsen.com/content/dam/corporate/us/en/reports-downloads/2017-reports/nielsen-african-american-diverse-intelligence-report-2017.pdf> [<https://perma.cc/55HZ-VA7C>]. As of 2015, there are 1.5 million Black woman majority-owned businesses. *Id.* The number of businesses majority-owned by Black women grew sixty-seven percent between 2007 and 2012, compared to thirteen percent for White women. *Id.* (citing the 2007 SURVEY OF BUSINESS OWNERS, U.S. CENSUS BUREAU (2007), <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> (last visited Feb. 9, 2018) (follow “2007”) and the 2012 SURVEY OF BUSINESS OWNERS, U.S. CENSUS BUREAU (2012), <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> (last visited Feb. 9, 2018) (follow “2012”)).

color in this Part I, the next Part will discuss how the differences are due in large part to structural barriers—those policies and practices that perpetuate inequality based on race—that continue to reproduce racial disparity that has manifested in the dramatic racial income and wealth gap.⁵³

II. THE ORIGINS OF THE RACIAL WEALTH GAP

The legacy of President Franklin Delano Roosevelt, which includes the passage of landmark social welfare legislation, referred to as the New Deal, is widely held to be a “social revolution” that “raised the entire nation to a plateau of social well-being never before experienced in U.S. history.”⁵⁴ While some, mostly White citizens, in the nation experienced a “plateau of social well-being never before experienced in history,” others, mostly people of color and immigrants, were experiencing devastating effects of discriminatory policies and practices that would have profound repercussions for generations.⁵⁵ This Part describes federal policies that created the wealth gap and the sources of wealth, which widen the gap.

A. *The Effect of Race-Neutral Federal Policies*

The United States has a long and entrenched history of racial inequality and White privilege propped up by the government, dating back to 1619 when the first African slaves landed in Jamestown, Virginia.⁵⁶ Since then, over time, government policies have hindered wealth building for people of color on the one hand, while bolstering wealth building for White Americans on the other. In the beginning of the twentieth century, starting with the New Deal, continuing through to the years after World War II, the federal government developed policies to support wealth building by encouraging homeownership and education through programs such as Social Security, certain worker protections such as the minimum wage and the establishment of unions, the Federal Housing Authority, and the G.I. Bill.⁵⁷ These seemingly race-neutral programs had a racially exclusionary effect because the legislation intentionally excluded

53. Mitchell, *supra* note 1, at 852. See generally OLIVER & SHAPIRO, *supra* note 1.

54. Michael J. Bennett, *The Law That Worked*, 75 EDUC. REC. 6, 8, 12 (1994); see also President Bill Clinton, Remarks by the President at “Remembering Franklin D. Roosevelt,” 50th Anniversary Commemorative Services, (Apr. 12, 1995), in PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES, WILLIAM J. CLINTON, 1995 BOOK I, at 524.

55. *Id.*

56. Sheryll Cashin, *Shall We Overcome? “Post-Racialism” and Inclusion in the 21st Century*, 1 ALA. C.R. & C.L.L. REV. 31, 38–39 (2011).

57. David M. Kennedy, *What the New Deal Did*, 124 POL. SCI. Q. 251, 253–54, 259 (2009); see also Sherry Cable & Tamara L. Mix, *Economic Imperatives and Race Relations: The Rise and Fall of the American Apartheid System*, 34 J. BLACK STUD. 183, 195 (2003); Thalia Assuras, *How the GI Bill Changed America*, CBS (June, 22, 2008, 8:22 AM), <https://www.cbsnews.com/news/how-the-gi-bill-changed-america/> [https://perma.cc/WCL9-9QBB].

categories of work where Black people and other people of color were overrepresented.⁵⁸ As described in more detail below, immigrants, Black Americans, and other people of color were excluded from economic opportunities tied to the social welfare legislation of the New Deal and did not benefit from such programs until decades after the legislation was enacted.⁵⁹

The Social Security Act of 1935 (“Social Security”) enacted during the Great Depression provided unemployment insurance and old age insurance to certain workers.⁶⁰ Under Social Security, covered workers paid into the scheme and were guaranteed money for retirement, disability, or the death of the family’s breadwinner.⁶¹ The insurance program applied to about half the jobs in the economy at the time it was enacted. Among those left out were farm and domestic workers, positions that were filled predominantly by people of color and immigrants.⁶² In general, “[sixty-five] percent of African Americans fell outside the reach of the new program” and the numbers went up to between seventy and eighty percent in different parts of the South.⁶³ Historian Ira Katznelson argues that since a disproportionate number of Black Americans were in these two occupational groups, the disproportionate impact is evidence of a racial bias as the motive for exclusion.⁶⁴ The effective exclusion of Black Americans and other groups—domestic and farm workers—from receiving Social Security benefits lasted until the 1950s.⁶⁵ By that time, a significant majority of the Black population was, economically speaking, behind their White counterparts.

The New Deal also brought changes to labor law and standards. Under the New Deal, legislation was passed that created modern unions and established a national minimum wage. The National Labor Relations Act (“NLRA”) was

58. Cable & Mix, *supra* note 57, at 195.

59. IRA KATZNELSON, *WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH-CENTURY AMERICA* 17 (2005) (“[T]he wide array of significant and far-reaching public policies that were shaped and administered during the New Deal and Fair Deal era of the 1930s and 1940s were crafted and administered in a deeply discriminatory manner.”).

60. Pub. L. No. 74-271, 49 Stat. 620 (codified as amended at 42 U.S.C. §§ 301–1397 (2012)).

61. *Id.*; see SOC. SEC. ADMIN., *UNDERSTANDING THE BENEFITS* (2018), <https://www.ssa.gov/pubs/EN-05-10024.pdf> [<https://perma.cc/23R3-T4GQ>].

62. Larry DeWitt, *The Decision to Exclude Agricultural and Domestic Workers from the 1935 Social Security Act*, 70 SOC. SECURITY BULL. 49, 49 (2010).

63. KATZNELSON, *supra* note 59, at 43.

64. *Id.* at 43–44.

65. DeWitt, *supra* note 62, at 55; see also Juan F. Perea, *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 OHIO ST. L.J. 95, 102 (2011). These occupational exclusions were eliminated in 1954 when Southern Democrats lost power in the United States Congress. See DeWitt, *supra* note 62, at 49.

passed in 1935.⁶⁶ The NLRA authorized workers to organize and to engage in collective bargaining.⁶⁷ In 1938, Congress passed the Fair Labor Standards Act (“FLSA”).⁶⁸ The FLSA set a national minimum wage and minimum standards for working conditions, including maximum work hours per week and prohibiting child labor.⁶⁹ According to some historians, the Southern Democrats in Congress supported the legislation as long as the laws did not threaten the existing racial hierarchy commonly known as Jim Crow.⁷⁰ As a result, to preserve the *status quo*, farmworkers and maids were carved out of the law’s protections.⁷¹ The carve out for farmworkers and maids from the new labor standards had the effect of excluding the majority of the Black population of workers in the South from benefiting from the law’s protections. In the same way that Black people were initially restricted from benefiting from Social Security, Black workers were restricted from benefiting from the new labor laws, therefore White laborers received the greatest benefit from the landmark legislation.

The Federal Housing Administration (“FHA”) was created in 1934, after the passage of the National Housing Act, in an effort to increase homeownership throughout the country.⁷² The National Housing Act provided low cost, government-supported home financing.⁷³ The loan program provided government-backed financing,⁷⁴ but the program operated under the premise that loaning money to racial minorities involved excessive risk.⁷⁵ Consequentially, the government policies subsidized segregation, increasing the movement of the White population away from cities and into suburbs, and containing minorities in declining urban areas.⁷⁶ Black Americans were also effectively excluded from this federal affordable housing initiative due to redlining,⁷⁷ the effect of which resulted in concentrated urban poverty. In the

66. 29 U.S.C. §§ 151–169 (2012).

67. *Id.*

68. 29 U.S.C. §§ 201–219 (2012).

69. *Id.* §§ 202, 206, 207, 2012.

70. KATZNELSON, *supra* note 59, at 40; *see also* Marc Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal*, 65 TEX. L. REV. 1335, 1382 (1987).

71. The bill had an explicit exclusion for individuals employed as “agricultural laborers” and “in the domestic service of any family or person at his home” 29 U.S.C. §§ 152 (2012).

72. 12 U.S.C. § 1701 (2012).

73. *Id.*

74. *Id.*

75. Brent Gaspaire, *Redlining (1937-)*, BLACKPAST.ORG, <http://www.blackpast.org/aah/redlining-1937> [https://perma.cc/KG52-CUFB].

76. RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA*, at xii (2017).

77. Gaspaire, *supra* note 75. Redlining is a term that describes the practice of the federal government mapping out all of the urban areas in the country and color-coding them to indicate where it was safe to issue mortgages and where it was risky. *Id.* The red line indicated areas that

FHA's first thirty-years of existence, just two percent of FHA loans went to families of color.⁷⁸ Black Americans generally did not benefit from federal housing programs until 1968 when the Fair Housing Act became law.⁷⁹ The Fair Housing Act prevented future discrimination but did nothing to remedy the past wrongs. By the time the Fair Housing Act was put into place, people of color had missed out on decades of growth and opportunity in the housing market.

In 1944, the Servicemen's Readjustment Act, better known as the G.I. Bill, was enacted to help World War II veterans adjust to civilian life.⁸⁰ The G.I. Bill is credited with providing low-income veterans with the opportunity for economic mobility,⁸¹ which in turn helped to create and build the nation's middle class.⁸² Historians have demonstrated that Black veterans received significantly less help from the G.I. Bill than their White counterparts.⁸³ Although not explicitly part of the legislation, many benefits were intentionally withheld from service members of color.⁸⁴ The G.I. Bill was color-blind social legislation, but the way the program was administered shows a true picture of how color-blind legislation can also be discriminatory.⁸⁵ The legislation was drafted to be administered locally,⁸⁶ which enabled discrimination toward Black veterans. Black veterans were denied housing and business loans, job-training programs, tuition, as well as admission to Whites-only colleges and

created the most risk and the redlined areas were neighborhoods that Black people lived in. *Id.* The practice of refusing a loan or insurance to someone because they live in an area deemed to be a financial risk or redlined by banks and government agencies prevented Black people from owning homes. *Id.* This practice started in the 1930s and grew popular in the post-civil rights era. *Id.*

78. NAT'L COMM'N ON FAIR HOUS. & EQUAL OPPORTUNITY, HOW WE GOT HERE: THE HISTORICAL ROOTS OF HOUSING SEGREGATION (2008), <http://archives.civilrights.org/publications/reports/fairhousing/historical.html> [<https://perma.cc/R4SQ-QPAZ>].

79. 42 U.S.C. §§ 3601–3619 (2012); *see also* NAT'L COMM'N ON FAIR HOUS. & EQUAL OPPORTUNITY, *supra* note 78.

80. Pub. L. No. 78-346, 58 Stat. 284 [hereinafter G.I. Bill]; *G.I. Bill*, HISTORY.COM (2010), <https://www.history.com/topics/world-war-ii/gi-bill> [<https://perma.cc/AY52-2JXD>].

81. Nick Kotz, 'When Affirmative Action Was White': *Uncivil Rights*, N.Y. TIMES (Aug. 28, 2005), <http://www.nytimes.com/2005/08/28/books/review/when-affirmative-action-was-white-un-civil-rights.html> [<https://perma.cc/CUB5-6DYM>]. In 1999, then President Bill Clinton gave a speech touting that the G.I. Bill "helped to unleash a prosperity never before known." *Id.*

82. MICHAEL J. BENNETT, WHEN DREAMS CAME TRUE: THE GI BILL AND THE MAKING OF MODERN AMERICA 279 (1996).

83. Juan F. Perea, *Doctrines of Delusion: How the History of the G.I. Bill and Other Inconvenient Truths Undermine the Supreme Court's Affirmative Action Jurisprudence*, 75 U. PITT. L. REV. 583, 585–86 (2014); *see also* KATZNELSON, *supra* note 59, at 114–15 ("Written under Southern auspices, the law was deliberately designed to accommodate Jim Crow. . . . [it was] as though the G.I. Bill had been earmarked 'For White Veterans Only.'").

84. Hilary Herbold, *Never a Level Playing Field: Blacks and the GI Bill*, 6 J. BLACKS HIGHER EDUC. 104, 104–05 (1995).

85. KATZNELSON, *supra* note 59, at 121 ("[T]here was no greater instrument for widening an already huge racial gap in postwar America than the [G.I.] Bill.").

86. Pub. L. No. 78-346, 58 Stat. 284 (1944).

universities.⁸⁷ Further, many Black veterans avoided applying for government guaranteed mortgages because they felt that the Veteran's Administration would reject them because of their race.⁸⁸ The veterans who benefited from the G.I. Bill went on to use the bill to acquire farms, start businesses, and buy homes guaranteed by the Veteran's Administration. The descendants of the excluded veterans did not inherit any wealth that would have accumulated as a result of the G.I. Bill, unlike the descendants of White veterans who did.

Some historians attribute the exclusion of Black Americans from these successful large-scale national programs that launched a strong White middle-class to racist and segregationist elements, such as the Southern wing of the Democratic Party in the United States Congress, who legislated and regulated these policies.⁸⁹ The Southern Democrats, who ascribed to Jim Crow, were a powerful element in Congress. According to Katznelson, they wanted to maintain the racist and segregation social norms of their constituents.⁹⁰ They achieved this by systematically excluding categories of work in which Black people were overrepresented, placing administration of the programs in the hands of local officials, and preventing Congress from including anti-discriminatory language in the legislation promoting the programs. Social Security, the National Housing Act, and the G.I. Bill were race-neutral federal programs that, in the early part of the twentieth century, effectively helped to create a White American middle class while hampering wealth creation in Black communities, thus maintaining a Black lower class.⁹¹ These public policies provided White Americans with a strong social safety net that advanced their economic status, insured them in old age, and allowed them to get good jobs, send their children to college, build wealth through the equity in their homes,

87. The statistics on disparate treatment are staggering. By October 1946, 6500 former soldiers had been placed in non-farm jobs by the employment service in Mississippi: White veterans filled eighty-six percent of the skilled and semiskilled jobs and Black veterans filled ninety-two percent of the unskilled jobs. KATZNELSON, *supra* note 59, at 138. Further, the G.I. Bill covered housing, where discrimination was rampant. In New York and northern New Jersey, "fewer than 100 of the 67,000 mortgages insured by the [G.I.] Bill supported home purchases by non-whites." *Id.* at 140. Discrimination continued as well in elite Northern colleges. The University of Pennsylvania, along with Columbia University, which are the least discriminatory of the Ivy League colleges, enrolled only 46 Black students in its student body of 9000 in 1946. *Id.* at 130. The traditional Black colleges did not have places for an estimated 70,000 Black veterans in 1947. *Id.* at 132. At the same time, White universities were doubling their enrollments and prospering with the infusion of public and private funds, and of students with their G.I. benefits. *Id.* at 132.

88. ROTHSTEIN, *supra* note 76, at xi.

89. KATZNELSON, *supra* note 59, at 40.

90. *Id.* at 40–41.

91. Nick Bunker, *The Top 10 Middle-Class Acts of Congress*, CTR. FOR AM. PROGRESS (Jan. 19, 2012, 9:00 AM), <https://www.americanprogress.org/issues/economy/news/2012/01/19/10944/the-top-10-middle-class-acts-of-congress/> [<https://perma.cc/6JVD-ZUDP>]; Herbold, *supra* note 84, at 106.

and rise to the ranks of the middle class. Black Americans were categorically left behind and left out from benefitting from the social welfare programs that were available to White Americans because they were prohibited either explicitly or effectively from participating in these programs. In addition, under the Jim Crow system, Black people were restricted from accessing capital, training, technology, and travel, all of which greatly hindered the ability for Black people to participate in the economic expansion of the early twentieth century.⁹²

Not limited to the past, in the post-civil rights era, discrimination in lending and congressional sanction of the practices of redlining,⁹³ housing projects,⁹⁴ contract buying,⁹⁵ blockbusting,⁹⁶ predatory lending,⁹⁷ and racial covenants⁹⁸ in low-income, urban minority communities is instructive here, as that history lays the foundation for an understanding of the continued wealth disparity in this country. While government-sanctioned discrimination is no longer legal, historically those structural barriers—policies and practices that perpetuate racial inequality—continue to reproduce racial disparity that has limited economic opportunity and prevented so many families of color from building wealth and owning a home.⁹⁹

Evidence shows that discrimination in mortgage lending is still occurring. Black families are twice as likely to be denied a home loan as compared to their White counterparts.¹⁰⁰ Communities of color were hit hardest by the housing

92. Steven J. Gold, *A Critical Race Theory Approach to Black American Entrepreneurship*, 39 *ETHNIC & RACIAL STUD.* 1697, 1706 (2016).

93. See Gaspaire, *supra* note 75.

94. See, e.g., Alana Semuels, *New York City's Public-Housing Crisis*, *ATLANTIC* (May 15, 2015), <https://www.theatlantic.com/business/archive/2015/05/new-york-citys-public-housing-crisis/393644/> [<https://perma.cc/HY4T-26SS>].

95. See Barbara Brotman, *Decades Later, Black Homebuyers' Battle for Justice Back in Spotlight*, *CHI. TRIB.* (July 25, 2015, 2:00 AM), <http://www.chicagotribune.com/news/ct-contract-buyers-league-20150724-story.html> [<https://perma.cc/FX9E-Q8VZ>]. Contract buying occurred where real estate speculators bought cheap houses and then sold them for much higher prices to Black families not as a mortgage but simply as a contract to buy. *Id.*

96. See Brent Gaspaire, *Blockbusting*, *BLACKPAST.ORG*, <http://www.blackpast.org/aah/block-busting> [<https://perma.cc/SD58-6F36>].

97. See Bill Fay, *Predatory Lending: What is Predatory Lending?*, *DEBT.ORG*, <https://www.debt.org/credit/predatory-lending/> [<https://perma.cc/VB24-ZNMG>].

98. See Julie Rose, *Hidden in Old Home Deeds, A Segregationist Past*, *NPR* (Feb. 6, 2010, 12:54 AM), <http://www.npr.org/templates/story/story.php?storyId=122484215> [<https://perma.cc/W3VR-4B4T>]; see also *Shelley v. Kraemer*, 334 U.S. 1, 23 (1948) (holding racial covenants violate the equal protection clause of the Fourteenth Amendment and are therefore unenforceable).

99. See Mitchell, *supra* note 1, at 852, 878.

100. *Black Applicants More than Twice as Likely as Whites to Be Denied Home Loans*, *ZILLOW* (Feb. 9, 2015), <http://zillow.mediaroom.com/2015-02-09-Black-Applicants-More-Than-Twice-as-Likely-as-Whites-to-be-Denied-Home-Loans> [<https://perma.cc/L5YN-5UXD>].

crisis, due to the phenomenon known as “reverse redlining.”¹⁰¹ As a result of reverse redlining, Black borrowers were steered toward subprime loans, a worse loan product than prime loans.¹⁰² When the housing market collapsed, majority Black neighborhoods were greatly affected. Many Black homeowners had subprime loans for the mortgages on their homes.¹⁰³ During the housing crisis, subprime mortgages went into default and many properties went into foreclosure, creating the foreclosure crisis. The Obama Administration’s modified loan program, effectively excluded a majority of Black borrowers because the program did not include subprime loans.¹⁰⁴ When the properties were foreclosed on, owners lost the asset, positive credit ratings, and were forced to move to a lower-income neighborhood. Studies have shown that Black Americans were more than twice as likely as lower-income White Americans to have subprime loans, and higher-income Black Americans were about three times as likely as higher-income Whites to have subprime loans.¹⁰⁵ Subprime loans were even issued to minority borrowers who qualified for conventional loans.¹⁰⁶

Beyond discrimination in the implementation of federal policies, current public policy subsidizes certain wealth building practices, such as home buying, saving for retirement, and paying for college. The federal government spends \$660 billion on the aforementioned wealth building practices.¹⁰⁷ The highest expense in this category is the home mortgage tax deduction.¹⁰⁸ The government continues to spend money on wealth building for those that are already wealthy

101. ROTHSTEIN, *supra* note 76, at 109–10. Reverse redlining is a reference to the practice of excessive marketing of exploitive loans in Black communities. *Id.* Brokers received incentives for closing on loans made with interest rates higher than recommended by banks or yield spread premiums (“YSPs”). *Id.* YSPs were banned by the 2010 Dodd-Frank Act. *Id.*

102. MEHRSA BARADARAN, THE COLOR OF MONEY: BLACK BANKS AND THE RACIAL WEALTH GAP 258–59 (2017) (“[I]t was revealed after the crisis that banks were specifically targeting [B]lack borrowers for their worst loan products even when they qualified for prime loans.”).

103. *Id.* at 109. Subprime loans for borrowers at risk of default included conditions that made repayment difficult. *Id.*

104. See Renae Merle, *After Helping a Fraction of Homeowners Expected, Obama’s Foreclosure Prevention Program is Finally Ending*, WASH. POST (Dec. 30, 2016), https://www.washingtonpost.com/news/business/wp/2016/12/30/after-helping-a-fraction-of-home-owners-expected-obamas-foreclosure-prevention-program-is-finally-ending/?noredirect=on&utm_term=.2dbed41553eb (last visited Mar. 9, 2018).

105. ROTHSTEIN, *supra* note 76, at 110–11.

106. Rick Brooks & Ruth Simon, *Subprime Debacle Traps Even Very Credit-Worthy*, WALL STREET J. (Dec. 3, 2007, 11:59 PM), <https://www.wsj.com/articles/SB119662974358911035> (last visited Mar. 9, 2018); RICHARD ROTHSTEIN, A COMMENT ON BANK OF AMERICA/COUNTRYWIDE’S DISCRIMINATORY MORTGAGE LENDING AND ITS IMPLICATIONS FOR RACIAL SEGREGATION 4 (2012), <https://www.epi.org/files/2012/bp335.pdf> [<https://perma.cc/P7FU-4QKJ>].

107. ASANTE-MUHAMMED ET AL., *supra* note 6, at 17.

108. *Id.* at 19.

and very little on the poor and people of color. Current government supported wealth-building practices subsidize the top twenty percent of all income earners.¹⁰⁹

The reality of the federal government's disparate treatment sharply contradicts its egalitarian promise and contributes to the widening of the racial wealth gap. The effects of the federal policies instituted in the early part of the twentieth century and beyond are felt today and are carried forward through intergenerational wealth transfers.

The discriminatory policies of the past live on in the form of the wealth gap. Fifty years after the Civil Rights Movement, the wealth gap is widening. The enormous growth is due in large part to the effects of intergenerational wealth transfers and homeownership. Wealth and real property, unlike income, accumulates in value and may be passed from generation to generation. Wealth transfers between generations contribute to the modern wealth gap¹¹⁰ because wealthy parents and grandparents can pass their wealth on to children and grandchildren through inheritance.¹¹¹ Black families have lower wealth levels than White families.¹¹² In a joint report, the Institute for Policy Studies and the Corporation for Economic Development, found that over the last thirty years the average wealth of White families had grown by eighty-four percent, 1.2 times the rate of growth for the Latino population and three times the rate of growth for the Black population.¹¹³ Twenty percent of wealth can be attributed to formal and informal gifts from family members.¹¹⁴ "Moreover, wealthier parents have access to better communities, better schools, and richer social networks, which can lead in turn to their children building more wealth than children lacking

109. *Id.* at 6.

110. Laurence J. Kotlikoff & Lawrence H. Summers, *The Role of Intergenerational Transfers in Aggregate Capital Accumulation*, 89 J. POL. ECON. 706, 730 (1981). "Intergenerational transfers appear to be the major element determining wealth accumulation in the United States." *Id.* Eliminating intergenerational transfers would reduce wealth by \$2.1 trillion. *Id.*

111. AUSTIN, *supra* note 51, at 18.

112. Laura Shin, *The Racial Wealth Gap: Why A Typical White Household Has 16 Times the Wealth of a Black One*, FORBES (Mar. 26, 2015, 8:00 AM), <https://www.forbes.com/sites/laurashin/2015/03/26/the-racial-wealth-gap-why-a-typical-white-household-has-16-times-the-wealth-of-a-black-one/#78e07d701f45> (last visited Feb. 9, 2018). Sociologist Dalton Conley confirms that family transfers contribute to the wealth gap. Dalton Conley, *Decomposing the Black-White Wealth Gap: The Role of Parental Resources, Inheritance, and Investment Dynamics*, 71 SOC. INQUIRY 39 (2001). Economist James Curtis traces the source of the Black-White wealth gap to slavery. James E. Curtis Jr., *Wealth Discrimination Theory* (Jan. 31, 2011) (unpublished manuscript), <https://ssrn.com/abstract=1751670> (last visited Feb. 9, 2018).

113. ASANTE-MUHAMMED ET AL., *supra* note 6, at 5.

114. Mel Jones, *Gifts, Debts, and Inheritances: Why So Many Minority Millennials Can't Get Ahead*, ATLANTIC (Nov. 29, 2015), <https://www.theatlantic.com/business/archive/2015/11/gifts-debts-inheritances/417423/> [<https://perma.cc/9BKL-HZD9>].

these advantages.”¹¹⁵ White Americans are more likely to receive an inheritance than Black Americans.¹¹⁶

Despite the collapse of the housing market during the Great Recession, homeownership is still the greatest source of wealth in the United States.¹¹⁷ Black homeownership lags behind White homeownership.¹¹⁸ Only forty-one percent of Black Americans own their homes, compared with seventy-one percent of White Americans.¹¹⁹ Black Americans not only build less wealth through a low rate of homeownership,¹²⁰ but home values in segregated communities of color are lower than in those of White communities,¹²¹ resulting in Black homeowners earning a smaller return on their investment. Further, because they are less likely to inherit money or receive financial assistance from their families, it takes Black people longer to buy homes, and they also have smaller down payments than their White counterparts.

Personal wealth, manifested by homeownership, plays an important role in entrepreneurship, often negatively affecting an entrepreneur’s ability to access capital. If a business owner is already wealthy or owns a home, it is more likely that the business owner will receive a bank loan.¹²² Studies show that owning a

115. AUSTIN, *supra* note 51, at 18.

116. THOMAS SHAPIRO, TATJANA MESCHEDÉ & SAM OSORO, INST. ON ASSETS & SOC. POLICY, THE ROOTS OF THE WIDENING RACIAL WEALTH GAP: EXPLAINING THE BLACK-WHITE ECONOMIC DIVIDE 5 (2013), <https://iasp.brandeis.edu/pdfs/Author/shapiro-thomas-m/racialwealthgapbrief.pdf> [<https://perma.cc/5UJY-85F5>].

117. Doug Ryan, *Homeownership Is Still Very Much an Asset-Building Strategy*, SHELTERFORCE (Aug. 12, 2014), https://shelterforce.org/2014/08/12/homeownership_is_still_very_much_an_asset-building_strategy/ [<https://perma.cc/CL8S-6YBE>].

118. SHAPIRO ET AL., *supra* note 116, at 3.

119. Rodney Brooks, *Declining Black Homeownership Has Big Retirement Implications*, FORBES (May 10, 2017, 12:21 PM), <https://www.forbes.com/sites/nextavenue/2017/05/10/declining-black-homeownership-has-big-retirement-implications/#45d87371e90c> (last visited Feb. 9, 2018).

120. SHAPIRO ET AL., *supra* note 116, at 3–4.

121. See ASS’N FOR ENTER. OPPORTUNITY, THE TAPESTRY OF BLACK BUSINESS OWNERSHIP IN AMERICA: UNTAPPED OPPORTUNITIES FOR SUCCESS 24 (2016), https://aeoworks.org/images/uploads/fact_sheets/AEO_Black_Owned_Business_Report_02_16_17_FOR_WEB.pdf [<https://perma.cc/SEZ9-L43E>]; Emily Badger, *‘This Can’t Happen by Accident,’* WASH. POST (May 2, 2016), <https://www.washingtonpost.com/graphics/business/wonk/housing/atlanta/> (last visited Feb. 9, 2018).

122. Ken Cavalluzzo & John Wolken, *Small Business Loan Turndowns, Personal Wealth and Discrimination*, 78 J. BUS. 2153, 2170–71 (2005); ALICIA ROBB, SBA OFFICE OF ADVOCACY, ACCESS TO CAPITAL AMONG YOUNG FIRMS, MINORITY-OWNED FIRMS, WOMEN-OWNED FIRMS, AND HIGH TECH FIRMS 4 (2013), [https://www.sba.gov/sites/default/files/files/rs403tot\(2\).pdf](https://www.sba.gov/sites/default/files/files/rs403tot(2).pdf) [<https://perma.cc/4823-6WGY>]. Banks are rarely a source of credit for Black businesses. ASS’N FOR ENTER. OPPORTUNITY, *supra* note 121, at 24–25. If Black business owners are approved for credit, it is for lower amounts than their White peers. *Id.* Approval rates are also lower for businesses owned by people of color than for White businesses, even with respect to credit products designed specifically to serve small business. *Id.*

home decreases the probability of loan denials among existing business owners.¹²³ With homeownership directly linked to building wealth, it is an example of a resource that is unavailable to entrepreneurs of color. The low rate of homeownership among entrepreneurs of color is important because entrepreneurial ventures often are financed with business loans that are tied to equity in the founder's home.¹²⁴ Low rates of homeownership translate into an inability for entrepreneurs of color to access capital through traditional mechanisms.

B. *The Impact on Entrepreneurs of Color*

The wealth building policies that favored White households over households of color continue to play a role in not only the current economic system but in the startup world. Without wealth, entrepreneurship may prove practically impossible because wealth is a strong determinant of who can achieve success, since there is a direct correlation between the revenues of a business and the wealth of its owner.¹²⁵ Wealth greatly impacts entrepreneurship in two ways. First, entrepreneurs typically use their own wealth to finance their startup venture. Second, the amount of wealth possessed by an entrepreneur affects her ability to access additional capital, since a business owner's wealth can be invested directly in the business, used as collateral to obtain business loans, or used to acquire other businesses. To simplify, the large differences in wealth by race directly correlate with differences in the capital available to entrepreneurs of color—"inequalities in personal wealth could translate into disparities in business creation and ownership" along racial lines.¹²⁶ Not only do differences in race affect access to capital, but data shows a disproportionate negative impact that access to capital has on profitability.¹²⁷

The historic injustices that caused the racial wealth gap have also contributed to the racial disparities in the entrepreneurial ecosystem. Research on the cause of the racial wealth gap has found that racial exclusion has historically been an impediment to building wealth through entrepreneurship. In

123. ROBB, *supra* note 122, at 6.

124. ROBERT W. FAIRLIE, IMMIGRANT ENTREPRENEURS AND SMALL BUSINESS OWNERS, AND THEIR ACCESS TO FINANCIAL CAPITAL, 23–24 (2012), <https://www.sba.gov/sites/default/files/rs396tot.pdf> [<https://perma.cc/2KM6-6VGB>].

125. There is a distinct difference between the wealth of Black businesses and that of White businesses. Cedric Herring & Loren Henderson, *Wealth Inequality in Black and White: Cultural and Structural Sources of the Racial Wealth Gap*, 8 RACE & SOC. PROBLEMS 4, 7 (2016). Further, studies have shown that low levels of wealth among Latinos and African Americans result in lower business creation rates relative to their representation in the U.S. population. *See also id.*

126. ROBB, *supra* note 122, at 4.

127. ALICIA ROBB & ARNOBIO MORELIX, EWING MARION KAUFFMAN FOUND., STARTUP FINANCING TRENDS BY RACE: HOW ACCESS TO CAPITAL IMPACTS PROFITABILITY 6 (2016), <https://www.kauffman.org/what-we-do/research/2016/startup-financing-trends-by-race-how-access-to-capital-impacts-profitability> (last visited Mar. 29, 2018).

its report, *The Color of Entrepreneurship*, the Center for Global Policy Solutions illustrated some of the historic factors that influence the current racial disadvantage in entrepreneurship, writing that:

African Americans have been disadvantaged because of slavery, Jim Crow, segregation, redlining, and their exclusion from the G.I. bill and homeownership incentives that enriched Whites after World War II. . . . These and other policies and practices greatly reduced the opportunities for people of color to build wealth.¹²⁸

The separate but equal doctrine entrenched during the Jim Crow era severely limited Black economic power and hindered business ownership as it restricted the location of Black-owned business to solely Black neighborhoods.¹²⁹ Anti-Black violence during this period aimed at restraining the development of Black economic power also significantly limited the development of Black businesses.¹³⁰ Black entrepreneurs during the Jim Crow era were the targets of violent attacks by White people.¹³¹ The outcome of the violent attacks often severely restricted Black entrepreneurship.¹³² Further, significant portions of an individual's wealth can be traced to historic state-sanctioned periods of racial

128. AUSTIN, *supra* note 51, at 18.

129. *See, e.g.*, LESTER C. LAMON, BLACKS IN TENNESSEE 1791–1970, at 73 (1981); *see generally* Plessy v. Ferguson, 163 U.S. 537 (1896) (establishing legality of separate but equal doctrine); JAMES W. LOEWEN, SUNDOWN TOWNS: A HIDDEN DIMENSION OF AMERICAN RACISM 15, 99 (2005) (documenting the fact that since 1898 thousands of White towns across the United States have, by law, excluded Black Americans, while other White towns also excluded Jewish, Chinese, Japanese, Latino and/or Native Americans, as well as Black Americans); Vicki Bogan & William Darity Jr., *Culture and Entrepreneurship? African American and Immigrant Self-Employment in the United States*, 37 J. SOCIO-ECON. 1999, 2004, 2018 (2008).

130. *See* David Pilgrim, *What Was Jim Crow*, FERRIS ST. U.: JIM CROW MUSEUM, <https://ferris.edu/jimcrow/what.htm> [<https://perma.cc/K4HE-2PNX>].

131. *See* Thomas Gibson, *The Anti-Negro Riots in Atlanta*, HARPER'S WEEKLY, Oct. 13, 1906, at 1457.

132. *See id.*

In 1906, a mob of drunken [W]hite youth attacked areas of African American residential and business concentration, murdered residents, and looted [B]lack-oriented businesses owned by both [B]lacks and European immigrants in Atlanta. . . . [and] [i]n the riot's aftermath, authorities imposed serious restrictions on [B]lack businesses. As a result, "every Negro barber shop and restaurant in the city was closed." In addition, "twenty two licenses for Negro restaurants and dives were revoked by the city council and thirty-nine more were set aside for investigation."

STEVEN J. GOLD, THE STORE IN THE HOOD: A CENTURY OF ETHNIC BUSINESS AND CONFLICT 29 (2010) (quoting Gibson, *supra* note 131). Similar attacks on Black business communities occurred in Springfield, Illinois, in 1908, in St. Louis, Missouri, in 1917, and in Chicago, Illinois, in 1919. *See, e.g.*, *The Chicago Race Riot of 1919*, HISTORY.COM (2009), <https://www.history.com/topics/black-history/chicago-race-riot-of-1919> [<https://perma.cc/W8E2-3DCK>]; Tabitha C. Wang, *The East Saint Louis Race Riot, 1917*, BLACKPAST.ORG, <http://www.blackpast.org/aah/east-st-louis-race-riot-1917> [<https://perma.cc/P2CX-KCMC>].

exclusion.¹³³ Thus, the racist and discriminatory history of government-sanctioned impediments to wealth creation for people of color¹³⁴ factors into the current challenges entrepreneurs of color face when building a startup venture.

Entrepreneurs of color have fewer assets, lower wealth, and less disposable income to invest in their business, so credit becomes a crucial component of gaining access to funding. In fact, the demand for financing is much higher for Black businesses, as eighty percent desired financing for planned growth or expansions.¹³⁵ Black and Latino business owners are disadvantaged from their initial inquiry with banks and are denied credit at higher rates than their White counterparts.¹³⁶ In a study conducted by three business school professors of nine businessmen of various races, but similar in size, stature, dress, education level, financial profiles, and business, they found that the Black and Latino entrepreneurs were provided far less information about loan terms, offered less application help by the loan officers, were less frequently handed a business card, and asked more questions about their personal finances.¹³⁷ Minority business owners experience higher loan denial probabilities than White-owned businesses, even when differences in creditworthiness and other factors were controlled.¹³⁸ If business owners of color are approved for a loan, it is for lower amounts than their White peers, and they pay higher interest rates.¹³⁹

Having described the historic discriminatory effects of race-neutral government policies and the effect that intergenerational wealth transfers and homeownership has on the wealth gap and on entrepreneurs of color, the next Part describes the unique challenges faced by entrepreneurs of color related to

133. See generally CTR. ON POVERTY, WORK & OPPORTUNITY: UNIV. OF N.C. AT CHAPEL HILL, TRACING THE CAUSES OF RACIAL WEALTH DISPARITY 6 (May 31, 2011), http://www.law.unc.edu/documents/poverty/publications/tracingcauses_povertycenter.pdf [<https://perma.cc/K3ZX-8ZX9>].

134. AUSTIN, *supra* note 51, at 18.

135. ASS'N FOR ENTER. OPPORTUNITY, *supra* note 121, at 24.

136. CHRISTINE KYMN, ACCESS TO CAPITAL FOR WOMEN- AND MINORITY-OWNED BUSINESSES: REVISITING KEY VARIABLES I (2014), <https://www.sba.gov/sites/default/files/Issue%20Brief%203%20Access%20to%20Capital.pdf> [<https://perma.cc/9KPH-ZHXH>]; JAN ONDRICH ET AL., THE RACIAL AND GENDER INTEREST RATE GAP IN SMALL BUSINESS LENDING: IMPROVED ESTIMATES USING MATCHING METHODS I (2011), <https://pdfs.semanticscholar.org/207b/ff7d7889c0ab9a3893c059091eca5ffdde51.pdf> [<https://perma.cc/MX9V-Z3S2>].

137. J.D. Harrison, *Black, Hispanic Entrepreneurs Discriminated Against When Seeking Small Business Loans*, WASH. POST (June 3, 2013), https://www.washingtonpost.com/business/on-small-business/black-hispanic-entrepreneurs-discriminated-against-when-seeking-small-business-loans/2014/06/03/70059184-ea86-11e3-9f5c-9075d5508f0a_story.html?utm_term=.20b1ca512a45 [<https://perma.cc/DXE3-RUQK>].

138. ROBB, *supra* note 122, at 6–7.

139. ONDRICH ET AL., *supra* note 136, at 17 (discussing how Black and Latino-owned businesses pay an interest rate that is, respectively, 0.791 and 0.486 percentage points higher than the rate paid by comparable White owned firms). There is no evidence that businesses owned by White women pay different interest rates than comparable businesses owned by White men. *Id.*

accessing financial capital to build and grow their business ventures as compared to their White counterparts.

III. THE PROBLEM WITH ENTREPRENEURSHIP THEORY

Entrepreneurship as a form of self-employment is often part of a poverty alleviation strategy for entrepreneurs—particularly for immigrant and minority entrepreneurs.¹⁴⁰ Under entrepreneurship theory, there are two likely ways to narrow the racial wealth gap: start a business or invest in a business. The largest drivers of the racial wealth gap and the largest factors in contributing to the success of an entrepreneurial venture are (1) the ability to generate wealth and (2) homeownership. White entrepreneurs tend to have two primary sources of that capital: their own wealth,¹⁴¹ which comes from homeownership, and the wealth of their network, which typically comes in the form of family wealth and/or inheritances.¹⁴² Black entrepreneurs, by contrast, generally have less individual wealth because of low homeownership rates and less access to wealth in their networks, primarily because of generations of poverty, suppression, and government policies.¹⁴³

The overall lack of access to external financial capital means that most entrepreneurs of color cannot participate fully in the vibrant entrepreneurial sector—either as successful founders of companies or as investors in our economy.¹⁴⁴ The small amount of funding raised by founders of color makes it difficult to scale companies past the initial stages of development. It is nearly impossible for them to test their ideas in the market and set out on the path toward wealth accumulation.

140. Dyal-Chand & Rowan, *supra* note 24, at 868. Professors Rashmi Dyal-Chand and James Rowan have also argued through the use of empirical data and economic theory that entrepreneurship thus far has failed as a framework for widespread and reliable economic development and poverty alleviation. *Id.* at 843 (finding that despite the enormous potential that entrepreneurship seems to hold for community economic development, it has thus far failed as a framework for widespread and reliable local economic development and poverty alleviation).

141. “Bootstrapping is a situation in which an entrepreneur starts a company with little capital. An individual is said to be bootstrapping when he or she attempts to found and build a company from personal finances or from the operating revenues of the new company.” *Bootstrap*, INVESTOPEDIA, <http://www.investopedia.com/terms/b/bootstrap.asp> (last visited Feb. 9, 2018). Studies show that two-thirds of entrepreneurs use personal savings to fund their venture. *Including People of Color in the Promise of Entrepreneurship*, SMALL BUS. EXCHANGE (Dec. 28, 2016), <http://www.sbeinc.com/resources/cms.cfm?fuseaction=news.detail&articleID=1862&pageID=25> [<https://perma.cc/6MEX-2C4L>].

142. One in five rely on family for funding. *Including People of Color in the Promise of Entrepreneurship*, *supra* note 141.

143. MCKERNAN ET AL., *supra* note 14, at 2. The homeownership rate for White families is 28.4% higher than the homeownership rate for Black families. *See* SHAPIRO ET AL., *supra* note 116, at 2–3.

144. CHRIS RABB, INVISIBLE CAPITAL: HOW UNSEEN FORCES SHAPE ENTREPRENEURIAL OPPORTUNITY 137 (2010).

A. *The Wealth Gap and Traditional Sources of Capital*

Beyond the challenges minority entrepreneurs face due to lack of individual wealth and low homeownership rates, they also face challenges with respect to accessing external sources of capital to start and grow their venture.¹⁴⁵ All entrepreneurs need access to capital to start or build their business ventures. Yet, as a practical matter, startup funding¹⁴⁶ almost exclusively goes to White men.¹⁴⁷ As of 2006, for example, only thirteen Black female founders have received over \$1,000,000 in outside funding,¹⁴⁸ while there are over 1.5 million businesses run by Black women.¹⁴⁹ The average initial capitalization of Black entrepreneurs is fifty-seven percent of White-led new businesses.¹⁵⁰ Economists Robert Fairlie and Alicia Robb found that the difference in the startup capitalization of new startups led by Black and White founders had a large effect on performance and that such low capitalization is a reason why Black-owned businesses are less successful.¹⁵¹ There are many reasons for this difficulty to obtain traditional sources of financing including lack of substantial collateral and business subject matter expertise, whether actual or perceived.¹⁵² Moreover, it has been shown that investors expect for a founder to invest a significant portion of his or her own capital into the business before the investor is willing to invest.¹⁵³ Because wealth is concentrated among primarily White individuals and funding streams to entrepreneurs mirror where the wealth already exists, the result is White male entrepreneurs receiving the majority of startup financing.¹⁵⁴

The success of a venture is directly tied to the founder's ability to finance the venture.¹⁵⁵ Therefore, acquiring external sources of capital is paramount to

145. See Dana Thompson, *L3Cs: An Innovative Choice for Urban Entrepreneurs and Urban Revitalization*, 2 AM. U. BUS. L. REV. 115, 124–26 (2012) (describing the challenges faced by urban entrepreneurs).

146. Startup funding refers to the funding required to start a new business, whether it be required for salary, marketing expenses, licenses, inventory, technology or product development, or other expenses.

147. KATHRYN FINNEY, *THE REAL UNICORNS OF TECH: BLACK WOMEN FOUNDERS*, DIGITAL UNDIVIDED 3, 8 (2016); see Bryce Covert, *Startup Funding Is Given Almost Entirely to Men*, THINK PROGRESS (Oct. 1, 2014, 3:31 PM), <https://thinkprogress.org/startup-funding-is-given-almost-entirely-to-men-8698c898c588/> [<https://perma.cc/GMJ6-CCV4>].

148. See Megan Rose Dickey, *Black Female Founder Raises \$7 Million for Renewable Energy Tech Startup*, TECHCRUNCH (Sept. 19, 2016), <https://techcrunch.com/2016/09/19/black-female-founder-raises-7-million-for-renewable-energy-tech-startup/> [<https://perma.cc/L7AV-CS7J>].

149. FINNEY, *supra* note 147, at 3.

150. SHANE, *supra* note 40, at 142.

151. Fairlie & Robb, *supra* note 9, at 303.

152. ROBB, *supra* note 122, at 3.

153. *Id.* at 5.

154. See, e.g., Fetsch, *supra* note 8.

155. Hai Truong, *5 Stages of Startup Funding*, TECHDAY, <https://techdayhq.com/community/articles/5-stages-of-startup-funding> [<https://perma.cc/2KVQ-RNGN>]. Those who can access capital will have a greater chance of startup success, even if the idea is not the most innovative. *Id.*

growing a business. Capital-raising in the life cycle of a startup begins with entrepreneurs exhausting their own resources; then they may expand their resources by borrowing money or giving equity in exchange for money from within a founder's network of family and friends.¹⁵⁶ Although more common among small businesses than startup enterprises, founders may also seek traditional bank or government loans (with founders' homes used as collateral). They might also seek angel investors or pursue venture capital funding.¹⁵⁷

The racial wealth gap affects the success of friends and family rounds. When entrepreneurs of color reach out to their friends and family for the seed capital to initially fund their venture, they are already behind their White counterparts because of the wealth and income gap.

Angel investors provide seed capital, or the earliest form of investment toward research and development.¹⁵⁸ Angel investors typically invest their own money in exchange for debt or equity in a startup venture. According to the Center for Venture Capital Research at the University of New Hampshire, angel investors invested an estimated \$25.8 billion in more than 71,000 early stage deals funded in 2015.¹⁵⁹ Angel investors are generally out of reach for entrepreneurs of color because most early stage entrepreneurs of color do not have an existing network of wealthy potential investors, nor do they have the means or ability to reach a pool of angel investors.¹⁶⁰ In their annual report on angel investments, the Angel Resource Institute tracked portfolio diversity for 2016.¹⁶¹ They found that minority women founders were three percent of all U.S. angel-backed deals and that minority men were twenty-five percent of all U.S. angel-backed deals in 2016.¹⁶²

Venture capital is equity financing that investors provide to startup companies and small businesses that the venture capital investors believe to have long-term growth potential.¹⁶³ The venture capital industry invested nearly \$30

156. *Id.*

157. *Id.* Although venture capital financing is rare in the startup context since the founders must typically prove their concept before venture capitalists get involved.

158. *See id.* Angel investors are wealthy individuals who enjoy investing in early stage startups. *Id.*

159. Larry Miller, *How to Raise Investment from Angels*, INNOVATION WORKS (Apr. 19, 2017), <https://medium.com/startups-and-investment/how-to-raise-investment-from-angels-b1e3a4e224e1> [<https://perma.cc/76TF-4WVT>].

160. Most angel investors are found by word of mouth. Carolyn M. Brown, *How to Meet Angel Investors*, INC.COM (Sept. 20, 2010), <http://www.inc.com/guides/2010/09/how-to-meet-angel-investors.html> [<https://perma.cc/75TV-R72B>].

161. ANGEL RES. INST., HALO REPORT: ANNUAL REPORT ON ANGEL INVESTMENTS (2016), <https://www.angelcapitalassociation.org/data/Documents/Resources/full-report-2016haloreport.pdf?rev=2A6C> [<https://perma.cc/5GVR-LCMR>].

162. *Id.*

163. *See* Truong, *supra* note 155.

billion into over 3000 companies in 2013.¹⁶⁴ Investors form funds to pool their money in order to invest in a venture collectively. Risk is typically high for investors, but the downside for the startup is that venture capitalists typically get a say in company decisions in their role as board members. Venture capitalists typically seek to invest in companies that innovate, disrupt the status quo, have potential for high rates of growth, and have a high likelihood of a substantial return on investments.¹⁶⁵ Many venture capitalists require a minimum annual sales figure for them to invest, such as one fund that requires annual sales of \$10 million or more.¹⁶⁶ There are many entrepreneurs who are in need of financing, whose annual sales have not and may never reach so high.

The venture capital industry is another industry dominated by White males.¹⁶⁷ For example, the gender and racial makeup of venture-backed startup companies is inconsistent with the demographics of the country as a whole.¹⁶⁸ In 2011, the National Venture Capital Association and Dow Jones Venture Source released the results of their 2011 Venture Census survey, examining the demographics of the U.S. venture capital industry.¹⁶⁹ The survey found that eighty-seven percent of venture capital professionals were White, nine percent were Asian, two percent were Black or Latino, and two percent were of mixed race.¹⁷⁰ Venture capital firms lend White men \$1.3 million on average, even if their startup fails, compared to \$36,000 for Black women.¹⁷¹ In the past five years, Black women received a negligible amount of venture capital funding—just .002 percent—while the number of Black women starting their own businesses has more than tripled in the last decade.¹⁷²

164. 2013 *Venture Capital Financing and Exit Annual Report*, CB INSIGHTS (Jan. 22, 2014), <https://www.cbinsights.com/research/venture-capital-report-2013/> [https://perma.cc/LM8L-DEPM].

165. See Allan Wille, *What Venture Capitalists Look for: Six Things VCs Want to See Before They Invest*, KLIPFOLIO (Jan. 13, 2017), <https://www.klipfolio.com/blog/venture-capitalists> [https://perma.cc/8T24-S73S].

166. Geri Stengel, *Want Venture Capital? Here Are 10 Must-Haves*, FORBES (Nov. 20, 2013, 11:17 AM), <https://www.forbes.com/sites/geristengel/2013/11/20/want-venture-capital-here-are-10-must-haves/#3a2f51809489> (last visited Feb. 9, 2018).

167. Jessica Guynn, *Venture Capital is Overwhelmingly White and Male*, USA TODAY (Dec. 15, 2016, 12:01 AM), <https://www.usatoday.com/story/tech/news/2016/12/15/national-venture-capital-association-deloitte-diversity-survey/95453926/> [https://perma.cc/Z9KS-GN6N].

168. See *id.*; *QuickFacts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/US/PST045216> (last visited Feb. 9, 2018).

169. EMILY MENDELL, CHANNA BROOKS & KIM GAGLIARDI, NATIONAL VENTURE CAPITAL ASSOCIATION & DOWJONES VENTURE SOURCE, DIVERSITY INCREASES AMONG NEWER VENTURE CAPITAL PROFESSIONALS WHILE GENDER COMPOSITION OF INDUSTRY REMAINS LARGELY UNCHANGED (2011), <http://images.magnetmail.net/images/clients/NVCA/attach/VentureCensus2011PRFINAL.pdf> [https://perma.cc/XQK3-2D42].

170. *Id.*

171. FINNEY, *supra* note 147, at 3.

172. *Id.* at 4–5.

Outside investment is typically only available to high-growth, scalable startup ventures, not to low-growth companies. For example, venture capital financing is a possibility for innovative, niche companies seeking to grow, but not for low-growth potential companies.¹⁷³ Low-growth businesses, unlike the high-growth businesses described above, are not likely to attract investors and venture capital funding because a profitable exit is unlikely.¹⁷⁴ Private funding and the existing capital structure are designed around high-growth businesses, yet not all businesses fit the mold of high-growth ventures.

Since traditional methods of financing, such as bank loans, angel investments, or venture capital are often out of reach, particularly for an entrepreneur of color with a startup venture or social enterprise, these groups have historically relied on credit cards,¹⁷⁵ personal loans, or friends and family to finance their business, in addition to pooling resources with members of their community. According to the Kauffman Foundation, “[D]ifferent racial groups rely on these sources [of startup capital] in different ways: Asian entrepreneurs rely the most on personal and family savings (73.2[%] of Asian-owned businesses); [W]hite entrepreneurs rely the most on business loans from banks (18.7[%]); and [B]lack entrepreneurs rely the most on personal credit cards (17.6[%]).”¹⁷⁶ Effectively, entrepreneurship as an economic development strategy only works for the privileged. Entrepreneurship theory is therefore not likely to work for those communities not already tapped into that privilege.

B. *The Wealth Gap and Innovative Sources of Capital*

Given the ways in which traditional capital-raising currently functions to maintain the status quo, crowdfunding, therefore, may be one aspect of the entrepreneurial landscape that may present one possible way for all entrepreneurs to access capital and raise funding because, on its face, it seems a fair and equitable way to level the playing field within the startup ecosystem. Crowdfunding, a capital-raising scheme whereby entrepreneurs seek investors

173. Bob Zider, *How Venture Capital Works*, HARV. BUS. REV., Nov.–Dec. 1998, at 133.

174. See Stengel, *supra* note 166.

175. ARNOBIO MORELIX, VICTOR HWANG & INARA S. TAREQUE, EWING MARION KAUFFMAN FOUND., ZERO BARRIERS: THREE MEGA TRENDS SHAPING THE FUTURE OF ENTREPRENEURSHIP 15 (2017), <http://www.kauffman.org/what-we-do/resources/state-of-entrepreneurship-addresses/2017-state-of-entrepreneurship-address> (last visited Feb. 9, 2018); Aaron K. Chatterji & Robert C. Seamans, *Entrepreneurial Finance, Credit Cards, and Race*, J. FIN. ECON. 2 (2012). According to the Kauffman Foundation, “Black entrepreneurs rely the most on credit cards to fund new companies or acquire existing ones.” MORELIX ET AL., *supra*, at 15. “In particular, [B]lack entrepreneurs are more likely to finance their ventures using credit cards than [W]hite entrepreneurs due to differences in frictions encountered when accessing traditional bank loans and other external finance.” Chatterji & Seamans, *supra*, at 15.

176. ROBB & MORELIX, *supra* note 127, at 2.

from the public using the internet,¹⁷⁷ would seem to be an antidote for the problem of raising capital from outside funders.

Because crowdfunding has the potential to increase the capital-raising opportunities available to entrepreneurs and investment opportunities available to non-wealthy investors, the JOBS Act¹⁷⁸ that President Obama signed into law on April 5, 2012¹⁷⁹ has been touted by scholars as having the potential to bring about a powerful shift in the existing traditional fundraising mechanisms.¹⁸⁰ Primarily aimed at entrepreneurs seeking capital,¹⁸¹ the JOBS Act theoretically increases the ability of small businesses to access capital and generate jobs, through the use of crowdfunding. Certainly, it seems plausible that given the issues described in Part III with respect to traditional capital-raising, crowdfunding would be a welcome and meaningful way for entrepreneurs of color to have equal access to capital. Supporters of the new securities regulations argue that such opportunity can change outcomes for certain groups of participants in the financial markets, since entrepreneurs who have been historically shut out of the market for traditional sources of funding, have the opportunity to appeal to their networks and to strangers over the internet to support their business.¹⁸² In addition, it is argued that non-wealthy investors have the ability to participate in the financial markets in a new way.¹⁸³

177. VENKAT KUPPUSWAMMY & KATHY ROTH, U.S. SMALL BUS. ASS'N OFFICE OF ADVOCACY, RESEARCH ON THE CURRENT STATE OF CROWDFUNDING: THE EFFECT OF CROWDFUNDING PERFORMANCE AND OUTSIDE CAPITAL 1 (2016), <https://www.sba.gov/sites/default/files/433-Crowdfunding-Performance-and-Outside-Capital.pdf> [<https://perma.cc/G25H-L9CQ>].

178. Pub. L. No. 112–106, 126 Stat. 306.

179. Mark Landler, *Obama Signs Bill to Promote Start-Up Investments*, N.Y. TIMES: POLITICS (Apr. 5, 2012), <http://www.nytimes.com/2012/04/06/us/politics/obama-signs-bill-to-ease-investing-in-start-ups.html> [<https://perma.cc/W85B-NTF2>]. For more information on the purpose of the JOBS Act, see President Barack Obama, Transcript: Obama's Speech to Congress on Jobs (Sept. 8, 2011), in N.Y. TIMES (Sept. 2011), <http://www.nytimes.com/2011/09/09/us/politics/09text-obama-jobs-speech.html> [<https://perma.cc/LE97-3R2R>].

180. See Andrew A. Schwartz, *Crowdfunding Securities*, 88 NOTRE DAME L. REV. 1457, 1460–61 (2013).

181. See Press Release, White House President Barack Obama, Fact Sheet: The American Jobs Act, <https://obamawhitehouse.archives.gov/the-press-office/2011/09/08/fact-sheet-american-jobs-act> [<https://perma.cc/P63D-SUTZ>]. President Obama's Administration also had the goal of stimulating the economy, stabilizing the housing market, and repairing the financial systems. *Id.*

182. JD Alois, *Crowdfund Capital Advisors Report: Crowdfunding Is Powerful Tool for Women and Minorities*, CROWDFUND INSIDER (July 28, 2014, 3:29 PM), <https://www.crowdfundinsider.com/2014/07/45447-crowdfund-capital-advisors-report-crowdfunding-powerful-tool-women-minorities/> [<https://perma.cc/3DZN-5UVJ>].

183. Sarah Kessler, *Equity Crowdfunding for Non-Rich People Is Coming*, FAST COMPANY (May 10, 2016), <https://www.fastcompany.com/3059707/equity-crowdfunding-for-non-rich-people-is-coming> [<https://perma.cc/Q457-U6UH>]; Adam Sharp, *Your Right to Invest in Startups*, EARLY INVESTING (July 29, 2015), <https://earlyinvesting.com/investing-in-startups-for-non-accredited-investors/> [<https://perma.cc/3V7R-Y4ES>].

Although the JOBS Act was intended to provide greater access to capital for entrepreneurs¹⁸⁴ and increased economic opportunity for ordinary investors, the legislation and current capital raising schemes available to entrepreneurs may not be enough to meaningfully narrow the racial wealth divide in part because the legislation and existing capital raising schemes take a narrow view of entrepreneurship, targeting mainly high-growth businesses.¹⁸⁵ Given the extensive SEC regulatory requirements, it is unlikely that future entrepreneurs of color will turn to investment crowdfunding to raise capital.¹⁸⁶ Of all its shortcomings, the law's greatest shortcoming is that it does not address structural inequality. At a time when legislators created a historic shift in the securities laws, there is a historic widening of the racial wealth gap—a gap so large that crowdfunding cannot narrow it.

C. Pattern Matching and Implicit Bias

There are certain heuristics and biases that entrepreneurs of color face, such as pattern matching and implicit bias.¹⁸⁷ Even if the business has high-growth potential and high sales, the reality is that investors tend to bring founders into their portfolio that look like themselves, have the same status, and have the same levels of education.¹⁸⁸ Studies have proven that when a person looks similar to ourselves, we automatically believe they are trustworthy.¹⁸⁹ Additionally,

184. The JOBS Act was one of the policies implemented by the Obama Administration to facilitate the economic recovery from the Great Recession. The JOBS Act was meant to invigorate the economy by loosening the rules for investing and fundraising and to encourage funding of small businesses by reducing existing securities regulations. When the JOBS Act was passed into law, President Obama stated the goal of the JOBS Act as “put[ting] more people back to work and more money in the pockets of those who are working.” President Barack Obama, Address by the President to a Joint Session of Congress, (Sept. 8, 2011, 7:42 PM), in *Obama's Job Speech Transcript*, POLITICO, Sept. 2011, <https://www.politico.com/story/2011/09/obamas-jobs-speech-transcript-063043> [<https://perma.cc/K3FB-7B3U>].

185. High-growth businesses are the focus of the legislation to the exclusion of low-growth smaller businesses. In passing the legislation, Congress and the Obama Administration asserted that high-growth businesses are vital to moving the U.S. economy. See generally U.S. DEP'T OF COMMERCE: NAT'L ADVISORY COUNCIL ON INNOVATION & ENTREPRENEURSHIP, REPORT TO SECRETARY LOCKE: IMPROVING ACCESS TO CAPITAL FOR HIGH-GROWTH COMPANIES (2011), <https://www.eda.gov/files/oie/nacie/NACIE-Report-Access-to-Capital.pdf> [<https://perma.cc/W57J-BBJD>].

186. Patricia H. Lee, *Access to Capital or Just More Blues? Issuer Decision-Making Post SEC Crowdfunding Regulation*, 18 TRANSACTIONS 19, 68 (2016).

187. See generally Amos Tversky & Daniel Kahneman, *Judgment Under Uncertainty: Heuristics and Biases*, 185 SCI. 1124 (1974).

188. See generally FINNEY, *supra* note 147, at 7.

189. Harry Farmer, Ryan McKay & Marros Tsakiris, *Trust in Me: Trustworthy Others Are Seen as More Physically Similar to the Self*, 25 PSYCHOL. SCI. 290, 290–92 (2013), <http://journals.sagepub.com/doi/10.1177/0956797613494852> (last visited Feb. 9, 2018); Damian A. Stanley et al., *Implicit Race Attitudes Predict Trustworthiness Judgments and Economic Trust Decisions*, 108

physical appearance can guide donation or investment decisions, even with a seemingly democratic vehicle such as a crowdfunding campaign. If bias is present in an anonymous vehicle, such as the internet, imagine the bias prevalent across person-to-person networks. The internet cannot simply eliminate other longstanding biases.¹⁹⁰ Some studies even suggest that some bias may be even stronger on the internet.¹⁹¹ Arguably, the internet should *erase* racial stereotypes where business proposals might actually be judged on their potential, not the race of the founders, but the bias and lack of anonymity on the internet have prevented crowdfunding to be free from bias.¹⁹² With such minimal participation by investors that look like them, entrepreneurs of color are unable to benefit from traditional sources of capital raising or crowdfunding in the manner that the JOBS Act intended.¹⁹³

D. Other Limitations

The JOBS Act does not, and it will not, fix the problems associated with angel investment and venture capital investment identified above. Crowdfunding is similar in nature to the government programs described in Part II. It is a race-neutral program much like Social Security, the G.I. Bill, and the Federal Housing Act, but parallels can be drawn between the current legislation and past legislation and their effect on people of color.

The current legislation targets the high-growth venture and the legislation ignores the low-growth venture. The crowdfunding opportunity is most favorable for scalable enterprises with an exit strategy and may not be a great fit for neighborhood businesses or low-growth businesses, which are the types of businesses owned and operated by founders of color. According to the Kauffman Foundation, “Minorities own half as many businesses as non-minorities do, and their businesses start smaller and stay smaller. . . . While the startup gap is

PROC. NAT’L ACAD. SCI. 7710, 7711 (2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3093479/> (last visited Feb. 9, 2018).

190. See Joe Pinsker, *How to Succeed in Crowdfunding: Be Thin, White, and Attractive*, ATLANTIC (Aug. 3, 2015), <http://www.theatlantic.com/business/archive/2015/08/crowdfunding-success-kickstarter-kiva-succeed/400232/> [<https://perma.cc/3W56-2D6G>].

191. *Id.* Studies show that bias factors into online investment decisions for donor-based crowdfunding, *id.*, and that there is little information as to whether bias could factor into equity crowdfunding campaigns.

192. *Id.*

193. Another way in which the entrepreneurship ecosystem marginalizes entrepreneurs of color is the emphasis on the narrative of struggle. Entrepreneurs of color have found that the only way to successfully raise money while crowdfunding is to fulfill a normative narrative of success by turning a narrative of struggle into success. See, e.g., J.J. McCorvey, *Tristan Walker’s Challenge: ‘How Can I Be the Best CEO I Can Be?’*, ENTREPRENEUR (July 5, 2017), <https://www.entrepreneur.com/article/296088> [<https://perma.cc/8435-BDE5>].

narrowing, the scaleup gap is huge.”¹⁹⁴ The JOBS Act was enacted to level the playing field, and the legislation was used as a tool to promote entrepreneurship in an effort to stimulate the economy,¹⁹⁵ but the statute’s focus on high-tech companies seems to have a narrow view of entrepreneurship. Further, it seems as though the JOBS Act was put in place to promote certain kinds of businesses, i.e., high-tech or high-growth ventures, and these kinds of businesses are not those most likely to have Black American founders.¹⁹⁶ So while crowdfunding might work for scalable high-tech ventures, it will not likely be favorable to most modest low-growth potential enterprises, the kind that are run by entrepreneurs of color.

Proponents of crowdfunding argue that it has the potential to play a positive role in improving the trajectory of a startup business and argue that crowdfunding can also play a role in providing investment vehicles for non-wealthy investors, who have been traditionally shut out of Wall Street.¹⁹⁷ Some have claimed that investment crowdfunding is the best source of startup funding for women and people of color.¹⁹⁸

There is not enough empirical evidence about whether the JOBS Act has created more economic opportunity for business of color. Bloomberg reports that in the twelve months since the legalization of equity crowdfunding, 142 companies have raised a total of \$37.6 million.¹⁹⁹ In contrast, venture investors

194. MORELIX ET AL., *supra* note 175, at 3, 14 (finding that while the average size of mature non-minority-owned businesses is \$2.3 million in annual revenue, the average size of minority-owned businesses is only \$1.6 million at the same age).

195. *See supra* Section III.B.

196. The Venture Capital Human Capital Report from 2010 found that: only [seventeen] percent of private, early stage internet companies receiving venture capital in the first half of 2010 [had] a minority on the founding team, and only [thirteen] percent of founders of internet firms receiving venture capital [were] minorities, with only one percent being Black or African American.

JPMORGAN CHASE & CO.: INITIATIVE FOR A COMPETITIVE INNER CITY, CREATING INCLUSIVE HIGH-TECH INCUBATORS AND ACCELERATORS: STRATEGIES TO INCREASE PARTICIPATION RATES OF WOMEN AND MINORITY ENTREPRENEURS, http://icic.org/wp-content/uploads/2016/05/ICIC_JPMC_Incubators_post.pdf [<https://perma.cc/M6QQ-8TXY>].

197. *See* Rodney Sampson, *Crowdfunding’s Power to Close the Racial Wealth Gap*, HUFFINGTON POST: BLOG (May 16, 2016, 12:15 PM), http://www.huffingtonpost.com/rodney-sampson/crowdfundings-power-to-cl_b_9994080.html [<https://perma.cc/F8MS-H4Z8>] (“I personally believe that equity crowdfunding is the most significant piece of financial based legislation for African Americans since the Emancipation Proclamation’s 1863 emancipation of the Southern Slaves.”).

198. *See generally* HABIB JAMAL, CROWDFUND CAPITAL ADVISORS, CROWDFUNDING’S POTENTIAL FOR MINORITY AND WOMEN OWNED ENTERPRISES 4 (2014), <https://www.scribd.com/document/235308665/Crowdfunding-s-Potential-for-Minority-and-Women-Owned-Enterprises> (last visited Feb. 9, 2018).

199. Lizette Chapman, *U.S. Startups Fail to Attract Crowd of Small Investors*, BLOOMBERG (May 19, 2017, 6:00 AM), <https://www.bloomberg.com/news/articles/2017-05-19/u-s-startups-fail-to-attract-expected-crowd-of-small-investors> [<https://perma.cc/5VTU-GZ38>].

invested \$69 billion according to the National Venture Capital Association.²⁰⁰ Crowdfunding has not been widely used by either White or Black communities. As with other race-neutral legislation, the JOBS Act will not close the racial wealth gap because it is a race-neutral remedy for racially explicit government problems.

Success in entrepreneurship is tied to wealth and privilege.²⁰¹ Given the historic wealth inequalities, the institutionalized practices related to homeownership and access to capital described in Part III that are rooted in racism and discrimination, entrepreneurs of color can not meaningfully participate successfully in the entrepreneurial landscape and can not reap the economic benefits of starting an entrepreneurial venture on an even playing field with their White counterparts.

Entrepreneurship is not likely to meaningfully assist entrepreneurs of color to achieve wealth parity with their White counterparts, nor is it likely to narrow the racial wealth gap in the United States. The barriers are too high, and the structures in place are too strong to overcome in order for the gap to have some movement. The problems of accessing capital are rooted in historical structural inequities that exist in the United States, such reliance on capital places entrepreneurs of color in a precarious position, as they are asked to build and grow their business under unequal conditions.

In order to change the current trajectory of low wealth, new economic opportunities must be created. Entrepreneurship theory says that business ownership and entrepreneurship can create such economic opportunity, but this discussion has hopefully described how such opportunity is often unfair and unequal, driven by past and present discriminatory practices.

This Part III illustrated how founders of color struggle to access sources of capital that are generally available to White founders without comparable equitable resources, demonstrating that it is harder for entrepreneurs of color to start and grow their ventures. The next Part identifies broad policy recommendations, which include improvements to the entrepreneurship ecosystem and beyond—aimed at removing barriers of structural inequality in an effort to meet the needs and goals of entrepreneurs of color—and takes into account the unresolved legacy of discrimination that affects the pursuit of their ventures.

200. Press Release, Nat'l Venture Capital Ass'n, After Peaking in 2015, Venture Investment Activity Normalizes in 2016, According to Pitchbook-NVCA Venture Monitor (Jan. 11, 2017), <https://nvca.org/pressreleases/peaking-2015-venture-investment-activity-normalizes-2016-according-pitchbook-nvca-venture-monitor/> [https://perma.cc/N683-V9FF].

201. See, e.g., Jordan Weissmann, *Entrepreneurship: The Ultimate White Privilege?*, ATLANTIC (Aug. 16, 2013), <http://www.theatlantic.com/business/archive/2013/08/entrepreneurship-the-ultimate-white-privilege/278727/> [https://perma.cc/6ZFN-8JGH].

IV. SOME RECOMMENDATIONS TO NARROW THE RACIAL WEALTH GAP

There is no legal framework for challenging the structural barriers that have created the systemic racial wealth gap and the barriers to success for entrepreneurs of color. In fact, such ideas are political landmines. Yet, law and policymakers need to have such a lens to effectuate policies that address systemic problems and reduce the existent disparities resulting from previous *race-neutral* policies and laws. The underlying issues that contributed to the racial wealth gap will not be addressed by legislation unless the legislation addresses structural inequalities that led to the wealth and resource disparities in the first place. Such a system would also need to address the structural barriers that lead to the disparities in entrepreneurship.²⁰²

Changing the status quo to create circumstances for entrepreneurs of color to grow their business and build and create wealth within their communities will allow everyone to benefit from greater economic output that is not concentrated among the majority population. Otherwise, without significant, targeted interventions in the American economy, entrepreneurs of color, and in turn, people of color, will never be able to close the racial wealth gap.

Given the long history of disparity that has led to the wealth gap and its effects on entrepreneurs of color, the removal and redress of structural barriers and effects of discrimination are challenging prospects. Part IV offers recommendations that could narrow the racial wealth gap for communities of color who lack access to financial and institutional capital for entrepreneurial ventures or who lack intergenerational wealth necessary to scale business ventures.

A. *Improvements to the Entrepreneurship Ecosystem*

Entrepreneurship arguably can be one element in a holistic approach to economic justice,²⁰³ and therefore could play a role in alleviating the racial wealth gap by supplying a mechanism for wealth accumulation and a potential source of job creation for people of color.²⁰⁴ Yet, it cannot be the only strategy for people of color to overcome systematic racism, structural inequality, and the

202. See Lee, *supra* note 186, at 54 (“The folly in a federal law’s ability to stimulate enterprise growth is the balance between political rhetoric on the one hand and actually creating a realistic road to job creation and access to capital on the other.”).

203. See Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLINICAL L. REV. 195, 199–200 (1997).

204. CTR. FOR GLOB. POLICY SOLS., A POLICY AGENDA FOR CLOSING THE RACIAL WEALTH GAP 4, <http://globalpolicysolutions.org/wp-content/uploads/2015/06/CRWG-policy-agenda-final.pdf> [<https://perma.cc/EA8Q-MH7H>].

racial wealth gap.²⁰⁵ There needs to be a holistic approach that incorporates marginalized communities into the entrepreneurial ecosystem. The solution to the gap must be multifaceted and contain multiple solutions. In 1943, a developmental psychologist, Abraham Maslow introduced a hierarchy of human needs, in his paper, *A Theory of Human Motivation*.²⁰⁶ Maslow's theory is that human beings cannot have self-actualization if they do not have all the other elements in place first.²⁰⁷ The parallel to his work with respect to entrepreneurship is that you cannot have a fair and equitable startup ecosystem without addressing some of the systemic inequities that surface within the system.

1. Increasing Access to Financial Capital

Typically, the success of a venture, whether it is a low-growth or high-growth venture, is directly tied to the founder's ability to finance the venture. As described above in Part III, research shows that capital is the number one predictor of a startup's success.²⁰⁸ Undercapitalized businesses are more likely to fail than businesses receiving optimal levels of startup capital because they suffer from lower sales, profits, and lack of employment.²⁰⁹ Therefore, those that can access capital will have a greater chance of startup success, even if the idea is not the most innovative.

Expanding access to traditional financial systems particularly for entrepreneurs of color is an essential strategy toward overcoming the racial wealth gap. Expanding banking and financial services for entrepreneurs of color could be accomplished by increasing access to capital through developing and supporting community development banks and credit unions. Expanding access to capital would expand access to entrepreneurship.

There are an estimated sixty-eight million American adults without bank accounts, who resort instead to payday lenders and check cashing exchanges that frequently charge exorbitant fees.²¹⁰ Expanding the range of community development and financial institutions in specific neighborhoods would increase access to capital. Some have argued that the United States Postal Service may

205. See Dyal-Chand & Rowan, *supra* note 24, at 839 (“Despite the enormous potential that entrepreneurship seems to hold for community economic development, it has thus far failed as a framework for widespread and reliable local economic development and poverty alleviation.”).

206. See A. H. Maslow, *A Theory of Human Motivation*, 50 PSYCHOL. REV. 370, 382 (1943).

207. *Id.* at 383.

208. Firms that start with more capital have higher survival rates. See Timothy Bates, *Unequal Access: Financial Institution Lending to Black- and White-Owned Small Business Start-Ups*, 19 J. URB. AFF. 487, 493 (1997).

209. ROBB, *supra* note 122, at 6.

210. U.S. POSTAL SERV., OFFICE OF INSPECTOR GEN., PROVIDING NON-BANK FINANCIAL SERVICES FOR THE UNDERSERVED I (Jan. 27, 2014), <http://op.bna.com.s3.amazonaws.com/der.nsf/r%3FOpen%3dtbay-9lnd6> (last visited Feb. 9, 2018).

be uniquely positioned to meet the financial services needs of those without access to banks. In a white paper, the Postmaster General describes the problem of the average underserved household spending \$2412 each year or a total of \$89 billion on interest and fees for alternative financial services.²¹¹ The Postal Service could help fill in the gaps left by closed financial institutions in underserved communities. The Postmaster General proposed to expand banking services available at local post offices, helping to fill in the gaps left by closed financial institutions in underserved communities.²¹² The proposal includes services such as reloadable prepaid cards with features that encourage people to save money, mobile transactions and products that help the underserved take part in e-commerce, such as postal loans in lieu of payday loans.²¹³

2. Increasing Access to Social Capital

One of the ways to improve access to wealth and capital is to build capacity for entrepreneurs of color by promoting mentorship. According to Professor Susan Jones, “All entrepreneurs need capital, access to credit, sound legal advice, and help with accounting, business planning, and marketing.”²¹⁴ Founders of color, however, need something more. They need business coaching, entrepreneurial networks, accessible business education, and access to social and human capital. This includes legal service providers such as law school clinics, and other service providers, such as incubators and business support professionals.

Increasing entrepreneurship education and increasing access to innovation and the entrepreneurship ecosystem will assist with building capacity. Business incubators,²¹⁵ accelerators,²¹⁶ and small business development centers²¹⁷ are there to support the growth of entrepreneurial ventures. Every entrepreneur and founder of a startup business may not have access to a small business development center and/or a business incubator. Studies show the survival rate

211. *Id.* at 2.

212. *Id.* at 9.

213. *Id.* at 10–14, 24.

214. Susan R. Jones, *Supporting Urban Entrepreneurs: Law, Policy, and the Role of Lawyers in Small Business Development*, 30 W. NEW ENG. L. REV. 71, 73 (2007).

215. A business incubator is a venture that helps new and startup businesses to develop by providing services, such as access to office space, mentorship, and business planning. Hubert Zajicek, *Accelerator vs. Incubator: Which is Right for You?*, ENTREPRENEUR (May 26, 2017), <https://www.entrepreneur.com/article/294798> [<https://perma.cc/3MM2-TY45>].

216. A business accelerator takes a group of companies, or a cohort, through a specific program over a typically defined period of time. *Id.* The program typically culminates in a pitch event or demo day. *Id.* Accelerators are often for-profit enterprises. *Id.*

217. The United States Small Business Administration’s Small Business Development Centers are required by law to offer general small business assistance to any small business owner that asks for help. *About Office of Small Business Development Centers*, U.S. SMALL BUS. ASS’N, <https://www.sba.gov/offices/headquarters/osbdc/about-us> [<https://perma.cc/R9X9-VY9J>].

of companies that go through an accelerator are three times that of companies that do not participate in one.²¹⁸ Research also shows that companies that complete an accelerator program grow faster than companies that do not complete an accelerator program.²¹⁹ There are often university-based, private, and nonprofit incubators that offer assistance to small businesses and startup founders to address the unique challenges that entrepreneurs face, such as access to capital, technical assistance, and networking. Often these programs offer access to mentors, provide some type of programming, and make referrals to financing and funding. Women and people of color are noticeably absent from these programs, however; they do not participate in incubators and accelerators at the same rates as their White male counterparts.

A research report by JP Morgan Chase & Co. and the Initiative for a Competitive Inner City described strategies to increase participation rates of women and minority entrepreneurs. Researchers found that women and minorities are not participating in high-tech incubators and accelerators at the same rates as their White, male counterparts.²²⁰

Other strategies would be to increase funding for business development centers that intentionally support entrepreneurs of color and include entrepreneurship skill-building in public school education. Lastly, strategies should be developed that specifically support low-growth businesses, which are the types of businesses that are typically founded by entrepreneurs of color.

A key strategy will be to make incubators and accelerators more inclusive, by expanding diversity initiatives to include founders of color,²²¹ and supporting organizations that target entrepreneurs of color to develop network/relationships, teach business acumen, and equip entrepreneurs with skills to help access capital, as well as develop entrepreneurs to become self-

218. DAVID A. LEWIS, DOES TECHNOLOGY INCUBATION WORK? A CRITICAL REVIEW, at vii (2011), http://umdrive.memphis.edu/jkwalkr1/public/business_incubator/do%20business%20incubators%20work.pdf [<https://perma.cc/N2ZV-2WDH>].

219. PETER W. ROBERTS ET AL., WHAT'S WORKING IN STARTUP ACCELERATION: INSIGHTS FROM FIFTEEN VILLAGE CAPITAL PROGRAMS 13–14 (2016), https://www.galidata.org/assets/report/pdf/GALI_digital_041816.pdf [<https://perma.cc/Y53D-LVFS>].

220. JPMORGAN CHASE & CO.: INITIATIVE FOR A COMPETITIVE INNER CITY, *supra* note 196.

221. For example, DreamIt Access, offers coaching, mentorship, seed funding, and access to opportunities, specifically for minority-led startups. Sarah Perez, *Minority-Focused Startup Incubator DreamIt Access Gets Renewed Investment, Will Continue for Two More Cycles*, TECHCRUNCH (June 13, 2013), <https://techcrunch.com/2012/06/13/minority-focused-startup-incubator-dreamit-access-gets-renewed-investment-will-continue-for-two-more-cycles/> [<https://perma.cc/T6KS-T8CM>]. EnrichHer is a debt crowdfunding platform for the women-led business community. ENRICHHER, <https://www.enrichher.co> [<https://perma.cc/4XRR-ZUDB>]. Smarter in the City is the first high-tech startup business accelerator in Roxbury, a neighborhood in Boston, Massachusetts. Smarter in the City supports local entrepreneurs from underrepresented communities in the tech sector to advance their technology-focused business. SMARTER IN THE CITY, <http://www.smarterinthecity.com/> [<https://perma.cc/X6WB-3N85>].

sufficient. One example of a company targeting multicultural and women founders is Morgan Stanley.²²² Morgan Stanley launched the Multicultural Innovation Lab (“Lab”), an accelerator program for technology and technology-enabled startups.²²³ The Lab was intentionally designed to increase outcomes for multicultural and women founders.²²⁴ The program focuses on companies with a founder, co-founder, or chief technology officer who is a woman or a person of color. In addition, the Lab seeks companies that “have the potential to develop innovations that could disrupt sectors.”²²⁵ The Lab will also invest in the companies supported by the Lab.²²⁶

As described above, entrepreneurs of color lack social networks and capital to attract venture capital investors.²²⁷ Supporting the expansion of venture capital dollars to entrepreneurs of color is a way to overcome structural barriers to economic success. One recommendation that has been suggested by the Center for Global Policy Solutions is the creation of tax incentives for venture capitalists to invest in certain neighborhood businesses, similar to an Empowerment Zone, in the form of a tax credit to promote venture capital investments in businesses owned by entrepreneurs of color.²²⁸ The Venture Capital Access Program is an example of a program that provides women and entrepreneurs of color access to angel investors and venture capital investors.²²⁹ Additionally, promoting and supporting community venture capital would potentially deliver venture capital to communities of color.

3. Increasing Access to Credit and Alternative Credit Models

As described above in Part II, for entrepreneurs of color, accessing credit is difficult, which makes capital raising an uphill battle. To combat the challenges relevant to accessing credit, one recommendation would be to develop alternative credit models other than the Fair Isaac Corporation (“FICO”) credit scoring system. The current FICO credit model is an exclusive credit assessment

222. See Press Release, Morgan Stanley, Morgan Stanley Selects 5 Startup Companies for Innovation Lab Targeting Multicultural and Women Founders (Aug. 2, 2017), <https://www.morganstanley.com/press-releases/morgan-stanley-selects-5-startup-companies-for-innovation-lab-ta> [https://www.galidata.org/assets/report/pdf/GALI_digital_041816.pdf].

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. RABB, *supra* note 144, at 137.

228. CTR. FOR GLOB. POLICY SOLS., *supra* note 204, at 5.

229. See *Venture Capital Access Program (VCAP)*, MARATHON FOUND. (2012), <http://marathonfdn.org/vcap/index.html> [<https://perma.cc/JAW5-QJTF>]. “The Venture Capital Access Program is a collaborative venture between the Harvard Business School Alumni Angels of Greater New York and the National Association of Investment Companies that provides women and diverse entrepreneurs with access to capital through venture capitalists and angel investors.” *Id.*

model that uses objective criteria to determine an individual's risk profile.²³⁰ Critics and experts question whether FICO is an appropriate credit model and have provided some alternatives.²³¹ The alternative credit model would use a different risk profile than the FICO credit score system, such as looking at payment of rent, utilities, childcare, and medical care to establish credit histories.²³² The alternative system would allow consumers to demonstrate credit-worthy behavior beyond the *objective* criteria of financial institutions with discriminatory history. This would expand access to credit and would be a strategy toward closing the racial wealth gap.

B. *Improvements Beyond Entrepreneurship*

1. Investing in Federal Policies

This Article has described how certain past federal policies affect outcomes for entrepreneurs of color, demonstrating that the racial wealth gap is perpetuated by historic and current federal policies that operate to reinforce and increase the wealth of the already wealthy. Half of the \$400 billion in annual federal asset-building subsidies, such as to promote homeownership, retirement savings, economic investment, and access to college, flow to the wealthiest five percent of taxpaying households.²³³ The bottom sixty percent of taxpayers receive less than five percent of these benefits.²³⁴

To change the status quo, the federal government needs to shift its focus to federal spending that promotes wealth building for those that need it and invest in policies that benefit low income people and people of color. Lawmakers must consider further changes to confront structural barriers to achieving racial economic parity. If policies that are put in place are race-neutral, but contingent upon wealth as opposed to income, then the programs would have a greater effect. Since the disparity between White and non-White wealth is so extreme, such a race-neutral shift in policy would effectively provide a race-conscious solution to the question of building assets.

230. See *What is a FICO Score?*, CONSUMER FIN. PROTECTION BUREAU (Jun. 13, 2016), <https://www.consumerfinance.gov/ask-cfpb/what-is-a-fico-score-en-1883/> [https://perma.cc/ZU4J-CKYE].

231. See Nick Clements, *5 Reasons New Lenders Are Ignoring FICO Credit Scores*, FORBES: INVESTING (Apr. 21, 2015, 12:20 PM), <https://www.forbes.com/sites/nickclements/2015/04/21/5-reasons-new-lenders-are-ignoring-fico-credit-scores/#64a53f3c2838> (last visited Feb. 9, 2018).

232. *Using Alternative Data in Credit Risk Modelling*, FICO BLOG, <http://www.fico.com/en/blogs/analytics-optimization/using-alternative-data-in-credit-risk-modeling/> [https://perma.cc/3V4L-BHK8].

233. Ida Rademacher, Beadsie Woo & Jillien Meier, *Upside Down: The \$400 Billion Federal Asset-Building Budget*, PROSPERITY NOW (Sept. 2010), <https://prosperitynow.org/resources/upside-down-400-billion-federal-asset-building-budget> [https://perma.cc/3YVR-HGCT].

234. *Id.*

The Institute for Policy Studies and the Center for Expanding Economic Opportunity recommend an evidence-based, government-wide audit of federal policies to understand the role current federal policies play in perpetuating or closing the racial wealth divide.²³⁵ Researching the historic and current role of federal laws and regulations would certainly be a necessary and logical first step in closing the racial wealth divide.

2. Expanding Homeownership

Since homeownership leads to an increase in wealth and access to capital, improving and expanding access to homeownership would be one of the best strategies to change the status quo and plausibly move toward narrowing the racial wealth gap and improve outcomes for entrepreneurs, since entrepreneurial success is tied to homeownership. Homeownership has many positive impacts on families. Equity in a primary residence is typically the largest asset an individual possesses and the asset that gets transferred across generations. Steps should be taken to increase homeownership rates among people of color. Some proposals have included leveraging new homeownership opportunities, such as banks lending at slightly below-market interests under the Community Reinvestment Act, such as the One Mortgage program in Massachusetts.²³⁶

Other proposals have included replacing the mortgage interest and real estate tax deduction,²³⁷ because wealthy households are the primary beneficiaries of such tax incentives. Instead of incentivizing the already wealthy to buy larger homes or to buy a second home, the government could promote primary homeownership for everyone. One way to do this is to create a public home purchase fund that would allow more individuals to purchase homes regardless of wealth. Such a fund would support first-time homebuyers, and it could be funded by the savings that would be garnered if we do away with the mortgage interest and real estate tax deductions that cost the government billions of dollars each year.

Congress should also reform foreclosure law and increase public policy around lending.

3. Increasing Intergenerational Wealth for People of Color

A major barrier to success for entrepreneurs of color is lack of intergenerational wealth. According to the Urban Institute, “[S]ocial welfare policies pay too little attention to wealth building and mobility relative to

235. ASANTE-MUHAMMED ET AL., *supra* note 6, at 18–19.

236. David Bryant et al., Fed. Reserve Bank of Boston, *Reducing Racial Wealth Inequalities in Greater Boston: Building a Shared Agenda 7* (2017), <https://www.bostonfed.org/publications/one-time-pubs/reducing-racial-wealth-inequalities-in-greater-boston.aspx> (last visited Feb. 9, 2018) (follow “Full Report (PDF)”).

237. ASANTE-MUHAMMED ET AL., *supra* note 6, at 20.

consumption and income.”²³⁸ Wealth building policies, such as tax subsidies for homeownership, retirement, and life insurance benefit the wealthy.²³⁹ Since families of color are less likely to be able to use these subsidies, they benefit little or not at all. Reforming policies and promoting savings opportunities for all Americans will help improve wealth inequality. Economists Derrick Hamilton and William Darity Jr. write that “[g]iven the importance of intergenerational transfers of wealth and past and present barriers preventing Black wealth accumulation, private action and market forces alone cannot close . . . [the] racial wealth gap. [sic]—public sector intervention is necessary.”²⁴⁰ They present two important proposals that would develop the wealth of the poor. The first is the “American Dream Demonstration . . . which uses Individual Development Accounts . . . to create match incentives for the poor to save . . .” and second is “the Savings for Education, Entrepreneurship, and Down-payment . . . initiative which establishes Children’s Development Accounts [“(CDA)”]. . . .” that are commonly referred to as Baby Bonds, which would create endowed trusts for children at birth.²⁴¹ The eligibility for the program would need to be determined based on the child’s family wealth, not income. Families that fall below the median wealth guidelines would receive CDAs. According to economists:

[T]he budget for the program would be less than [ten percent] of the non-war spending budget for the Department of Defense. There are about [four] million babies born each year in the [United States]. If the average trust is set at \$20,000 per child and three-quarters of all newborns ([three] million) are made eligible for the program, the baby bond program would cost about \$60 billion per annum. Although this simple estimate does not incorporate costs resulting from increased fertility incentives, it also does not incorporate savings resulting from reduction in other federal transfer programs associated with better-resourced young adults.²⁴²

The United Kingdom implemented a program of baby bonds in 2005. The program supporting child trust funds closed in 2011 and has been replaced by a tax-free savings program, called Junior ISAs.²⁴³ In the baby bonds program, each

238. MCKERNAN ET AL., *supra* note 14, at 4.

239. “The federal government spends hundreds of billions of dollars each year to support long-term asset development. But these asset-building subsidies primarily benefit high-income families, while low-income families receive very little.” *Id.* at 5.

240. Darrick Hamilton & William Darity Jr., *Can ‘Baby Bond’ Eliminate the Racial Wealth Gap in Putative Post-Racial America?*, 37 REV. BLACK POL. ECON. 207, 214 (2010).

241. *Id.* at 215.

242. *Id.*; see ANNIE E. CASEY FOUND., INVESTING IN TOMORROW: HELPING FAMILIES BUILD SAVINGS AND ASSETS 3 (Jan. 2016), <http://www.aecf.org/m/resourcedoc/aecf-investingintomorrow-2016.pdf> [<https://perma.cc/X5FH-S9YK>].

243. Helen Saxon, *Child Trust Funds*, MONEYSAVINGEXPERT.COM (May 2017), <https://www.moneysavingexpert.com/savings/child-trust-fund-vouchers> [<https://perma.cc/3ZBT->

newborn received a trust of £250 to £500, which was dependent on the family's resources.²⁴⁴ In the current iteration of the program adults contribute to a tax-free account until a child's eighteenth birthday. The United States could develop a program that would endow all children with a trust at birth that would grow annually at an interest guaranteed by the federal government. The child would have access to the trust when she turned eighteen for "asset-enhancing events" such as funding higher education, homeownership, or funding a venture. The trust program could be universal, but the amount of the account would be tied to the parent's wealth. Economists estimate that with approximately four million infants born each year, and an average endowment of around \$20,000, the costs of the program to be \$80 billion.²⁴⁵ This number would have constituted only 2.2 percent of 2012 federal expenditures.²⁴⁶

Without addressing racial disparity in entrepreneurship, the racial wealth gap will continue to widen and cost the economy jobs. The wealth gap is causing America to forego an estimated 1.2 million businesses owned by people of color.²⁴⁷ According to Algernon Austin, those "missing businesses could produce an estimated nine million more jobs and boost our national income by \$300 million."²⁴⁸ The wealth gap and other historical and ongoing discriminatory practices leave entrepreneurs of color without access to needed capital, and the hope that many have placed in crowdfunding is unlikely to overcome that challenge, so Congress and policymakers need to develop and craft other policy changes if the existing disparities in the entrepreneurial ecosystem are to be addressed.

CONCLUSION

Entrepreneurship was touted as the means to overcome the economic crisis and has been touted as a solution for people of color to overcome disadvantages and discrimination. However, as described herein, entrepreneurship theory as a strategy to close the wealth gap will fail because successful entrepreneurship is dependent upon privilege. The idea that the way forward to build wealth and close the racial wealth gap is for entrepreneurs of color to either start a high-growth business or to invest in a high-growth business neglects to understand

3FMQ]; see *Child Trust Fund*, GOV.UK, <https://www.gov.uk/child-trust-funds> [<https://perma.cc/UK6C-2P78>].

244. Saxon, *supra* note 243.

245. DARRICK HAMILTON ET AL., NAT'L ASSET SCORECARD & CMTYS. OF COLOR, UMBRELLAS DON'T MAKE IT RAIN: WHY STUDYING AND WORKING HARD ISN'T ENOUGH FOR BLACK AMERICANS 8 (2015), http://www.insightcced.org/wp-content/uploads/2015/08/Umbrellas_Dont_Make_It_Rain_Final.pdf [<https://perma.cc/NCB9-9EH3>].

246. *Id.*

247. MORELIX ET AL., *supra* note 175, at 14.

248. AUSTIN, *supra* note 51, at 3.

the reality of Black Americans who are being asked to start a business on an uneven playing field.

Confronting the racial wealth gap and the race-neutral public policies that continue to amplify the disparity can create a more equitable future. Rather than race-neutral public policy, the ideal should be a race-fair policy that does not further the transmission of racial economic advantage or disadvantage from generation to generation. Absent specific policy interventions that address the racial wealth gap, the gap will never close. It certainly will not be closed through entrepreneurship. Inclusive, wealth-building strategies applied in a fair and equitable manner will close the wealth gap. If nothing is done, the racial wealth gap will continue to grow unabated.