

THE QUARTERLY REPORT



NOTE FROM THE JOURNAL

Introduction to “The Quarterly Report”

The Houston Business and Tax Law Journal is an academic publication with a mission to provide legal scholarship in all areas of business law. The journal’s two principal functions are to supplement the legal education of its members and to contribute to legal scholarship. The journal is operated and managed entirely by students from the University of Houston Law Center who select, edit, and publish articles and notes submitted by its members, law professors, and practitioners across the United States.

In the wake of past events that highlighted the continuing struggles and systematic oppression of minority groups within our nation, the journal believes that we have a duty to provide an avenue to examine and discuss such issues as they arise within business and other related contexts. To achieve this goal, we set out to establish a note to be released on a quarterly basis that will include articles by, and interviews with, students, academics, and professionals in the hopes of illuminating these issues. We believe that scholarly writing is one of the greatest mechanisms for pushing the gears of substantive progress into motion, and we hope that these reports will help provide a voice to those in need.

EDITION 1.1

Our first edition includes a prologue to a more extensive article to be published by the journal in the coming months. The piece, *Black Livelihoods Matter: Capitalist Myths of Economic Efficiency in Racist Lending Policies (A Prologue and a Plea)*, discusses examples from the nation’s history of racially motivated lending practices, and makes a call to action for all young legal minds and students to help change the course of the nation regarding such practices.

BLACK LIVELIHOODS MATTER: CAPITALIST MYTHS OF ECONOMIC EFFICIENCY IN RACIST LENDING POLICIES (A PROLOGUE AND A PLEA)¹

By: Kim Vu-Dinh

It is widely-held capitalist lore that Black households qualify for fewer, smaller loans, have fewer businesses, and are more rarely homeowners, simply because they have smaller household incomes. Bankers will shrug their shoulders at glaring racial disparities in their portfolios, disavowing any presence of racism in their field. Black households, bankers argue, are charged higher rates for banking and lending products and services because of the smaller interest income collected from smaller deposit accounts and loans.

These same bankers are loath to acknowledge the multi-faceted dangers of short-term policies that seek to maximize profit in the most immediate time frame possible policies that have become the bedrock of the U.S. banking system. For decades White men at prestigious law schools and graduate institutions across the nation have made careers out of enshrining the idea that wealth maximization was the most efficient outcome that rose all boats. These men argued that to appeal to concepts of justice was to do so at the detriment of overall societal wealth.

Simply put, these banking theories have been proven wrong time and time again. The 2008 collapse of the US banking system highlighted the inherent weaknesses of short-term policies and brought about a federal magnifying glass on the failed lending practices. From that magnifying glass resulted an abundance of evidence of economically unsound and racist policies.

For instance, based on a study of almost 4 million mortgage applications from 2006, Black and Latino households making more than \$200,000 were given subprime loans at a rate that exceeded subprime loans made to white households making less than \$30,000. Numerous other studies that controlled for both household income and credit score came to the same conclusion. A federal investigation found 34,000 instances in which Wells Fargo charged Black borrowers more loan fees and/or interest than their White counterparts with similar credit profiles; at least 4,000 of those borrowers qualified for cheaper loans.

A comprehensive report from an economist at the Federal Home Loan Bank of Boston looked at credit card offers made to over 285,000 borrowers over two points in time. The report denoted that offers made to households living in predominantly Black neighborhoods resulted in fewer credit lines and lower credit limits, as compared to households with the same or similar credit scores and debt-to-income ratios living in predominantly White neighborhoods.

Small businesses are one of the most promising means of wealth creation for minority communities and provide income opportunities to people of color vulnerable to discrimination in other workplaces. Studies have revealed that more information about rates and better loan products was given to White business credit shoppers between 35-44% more often than their Latino and Black counterparts with similar credit and income profiles.

¹ Kim Vu-Dinh is an Assistant Professor at the Bowen School of Law. The Business and Tax Law Journal will be publishing Professor Vu-Dinh's longer article with a similar title in a coming issue. The future article will address discriminatory practices in business lending and make policy recommendations.

Why is this so?

Surely, a rational explanation exists in an economic and legal system that prizes the “rational actor” and the “invisible hand” that guides the free market and the courts towards good outcomes. Certainly, many argue, if there were a financially sound opportunity to serve Black households, the private sector already would have filled that niche. What logical reason exists to explain why Black households are targeted with more exploitive financial products than similarly-situated White households?

The fact of the matter is that racism has never been logical—neither morally nor economically. There is no morally sound reason to preserve a hierarchy of wealth and privilege for Americans based on skin color, just as there is no moral basis for slavery, an institution that legally existed in this country for over a century. Nor is racism a sound economic practice: what efficiency exists in spending more energy to target Black consumers over their similarly-situated White counterparts with inferior loan products that result in near term default? Even for the greediest of bankers, is it more efficient to steer Black households in and out of homeownership through the lengthy and costly foreclosure process than it is to offer affordable loan products that would enable that household to succeed?

Ample evidence reflects that increased ethnic diversity of residential neighborhoods and businesses results in a more stable, wealthier economy. In housing, racially segregated neighborhoods have been found to correlate and cause an overall decrease in property values in a city. Increased diversity in a workplace has shown to result in lower turnover costs, allowing workers to grow within an organization instead of prompting them to leave a hostile workplace. Diversity has also been found to result in increased innovation in the workplace; In one study, 85% of 321 companies with \$500 million in revenue agreed that diversity was “key to driving innovation in the workplace.” Diversity in business ownership also has

been found to be key in driving the economy forward; by 2050, there will be no majority ethnicity in the U.S. and banks will need to learn how to meaningfully serve businesses of color in order to survive.

Despite all of the reasons suggesting that inclusive economics would be the most economically efficient banking and finance policy, racism persists. Given our nation’s long-seated roots to the slavery economy, a practice that was no less imperative to Northern bankers than Southern plantation owners, it should be no great surprise. In fact, one might argue that the absence of racism less than 200 years after the abolition of slavery would be remarkable.

However, it would be incomplete to not recognize that some progress has been made in racial equality under the Bill of Rights, and later the Civil Rights Act that resulted in large part from the activism of Dr. Martin Luther King. It is a lesser-known fact that to Dr. King, political freedom was inherently tied to economic freedom, and before his death he created the Poor People’s Campaign which sought to unify the rural poor, the labor movement, and Black activism. In his work entitled, *Where Do We Go From Here*, completed within months before his assassination, he wrote:

Four million newly liberated slaves found themselves with no bread to eat, no land to cultivate, no shelter to cover their heads. It was like freeing a man who had been unjustly imprisoned for years, and on discovering his innocence sending him out with no bus fare to get home, no suit to cover his body, no financial compensation to atone for his long years of incarceration and to help him get a sound footing in society; sending him out with only the assertion: ‘Now you are free.’ What greater injustice could society perpetrate? ... Negroes have irrevocably undermined the foundations of Southern segregation; they have assembled the power through self-organization and coalition to place their demands on all significant national agendas...From issues of personal dignity they are now advancing to programs that impinge upon the

basic system of social and economic control. At this level Negro programs go beyond race and deal with economic inequality, wherever it exists. In the pursuit of these goals, the white poor become involved, and the potentiality emerges for a powerful new alliance.

So, where do we go from here? As a society that has just recently engaged in the most populous acts of mass action since the 1960's in response to race-based police brutality, where do we go from here?

I sincerely believe the answer lies in your hands.

When these three years of law school come to an end, you will be scattered amongst the many legal sectors, across the state, the region, and even the nation, if not the world. Some of you will practice law, and some might find other ways to use your law degree. Whatever your choice, you will be armed with a rare tool—an education in the power structure of this country, and in a larger sense, the Western world. In these three years you will have learned about the Constitution, and the law of contracts, property, and business corporations—in essence, power and how it works. From graduation forward, you have a duty to uphold the Constitution, a living document which once supposed that the Black man was 3/5 in value of the White man, and now prohibits the persistence of slavery and any badge of it. As a lawyer, you will no longer have the privilege of ignorance when you speak of, or work on behalf of, power. Further, as lawyers, you will have a duty to educate yourself on the circumstances that result in the legal conundrum that is presented in the file that was handed over to you.

You will get used to your new place in society, and it will become easy to forget how special and unique this profession is, and to forget about your power to ensure that the Constitution continues as a living document to protect the disenfranchised. But I implore you to remember your ability to identify inequities and bring about change in our legal and financial system. Frederick

Douglas once argued that good, decent, people who do not want to overthrow the government still have the ability to bring about real change in the world of finance and wealth. He wrote:

Here is a problem worthy of the attention of that noblest of men, the true statesman; not one that regards position and power, as instruments for the advancement of self or a class, but one who seeks to reach and improve the condition of all subject to his sway, to make that improvement lasting, to render government a blessing, instead of an evil, borne by the subject, because he fears its overthrow may lead to worse. If such a statesman shall devise measures, which, while they will not hamper private enterprise, shall yet prevent the undue accumulation of wealth in the hands of individuals or associations, he will have merited and secured a fame more lasting than has yet fallen to the lot of man.

I have faith in your generation—I have seen members of your generation become activists, successfully run for office against all odds, engage in the dialogue on climate change, and most engage in thoughtful public protests in the name of racial equality. I look forward to when you all will populate the courtrooms, boardrooms, and banks. Be critical thinkers of the institutions that discriminate and label it as economic efficiency. After all, in your own lifetime the financial system—built by your parents' and grandparents' generations, and condoned by my generation, filled with racially discriminatory practices and policies—has fallen to its knees mired in its own false projections. When you see patterns of inequality in your workplaces, do not just accept them as the standard—question how and why this is so, and research to make your case for change when there is one. To paraphrase Mahatma Gandhi, commit to being part of that change that you wish to see. Equal access to economic rights makes for a stronger economy, and a stronger, more democratic nation. In my heart and my mind, I believe your generation is the one that will take us there.

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