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# “A Stone of Hope”: The Civil Rights Act of 1964 and Its Impact on the Economic Status of Black Americans

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# “A Stone of Hope”: The Civil Rights Act of 1964 and Its Impact on the Economic Status of Black Americans<sup>1</sup>

Jenny Bourne\*

## INTRODUCTION

Fifty years ago, the Civil Rights Act of 1964 (CRA) carved American law anew.<sup>2</sup> In particular, Title VII forbade employers, employment agencies, and labor organizations larger than a certain size from discriminating against individuals due to their race, color, religion, sex, or national origin.<sup>3</sup> Some have viewed Title VII as mostly symbolic because the Equal Employment Opportunity Commission (EEOC) established by the CRA initially had very limited power and resources. Others have considered it merely a continuation of change already in progress or a minor factor in improving the economic status of black Americans. In this Article, I examine the impact of Title VII on labor-market outcomes with high-precision data samples drawn from the U.S. federal censuses for 1940 through 2000 and the 2010 American Community Survey.<sup>4</sup>

I find that real wages among employed, black, male household heads aged 20 to 60 years old increased sharply during the 1960s

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1. The title comes from a sermon delivered by Reverend Martin Luther King, Jr., at the National Cathedral on March 31, 1968. Martin Luther King, Jr., *Remaining Awake Through a Great Revolution* (Mar. 31, 1968), *available at* [http://mlk-kpp01.stanford.edu/index.php/encyclopedia/documentsentry/doc\\_remaining\\_aware\\_through\\_a\\_great\\_revolution](http://mlk-kpp01.stanford.edu/index.php/encyclopedia/documentsentry/doc_remaining_aware_through_a_great_revolution) [<http://perma.cc/A4A4-5CMW>] (archived Apr. 6, 2014) (“[W]e will be able to hew out of the mountain of despair the stone of hope.”).

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2. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241.

3. Title VII applied only to entities with 100 or more employees or members in the first year of enactment. Title VII, § 701(b) (1964). The relevant numbers were 75 for the second year, 50 for the third year, and 25 thereafter. Title VII, § 701(e) (1964). Executive Order 11246 established the Office of Federal Contract Compliance prohibiting racial discrimination among federal contractors with at least 50 employees. Exec. Order No. 11246, 30 Fed. Reg. 12319 (Sept. 24, 1965).

4. Steven Ruggles, J. Trent Alexander, Katie Genadek, Ronald Goeken, Matthew Schroeder & Matthew Sobek, *Integrated Public Use Microdata Series: Version 5.0*, IPUMS USA, <https://usa.ipums.org/usa> (last visited Mar. 10, 2014). I used the 1% IPUMS samples for 1940–1970 and 2010 and the 5% samples for 1980–2000, appropriately weighted.

across all ages and educational levels.<sup>5</sup> The largest spike in gains went to black men living in states covered by the Voting Rights Act of 1965 (VRA),<sup>6</sup> particularly high school dropouts. On average, real wages increased both in absolute terms and relative to the wages of white men living in the same region. The growth rate in real wages for black men living in VRA states exceeded that for black men living elsewhere and for all white men from the 1960s onward, with the largest difference occurring in the decade of the '60s. Notably, employed black men living in VRA states earned less than half as much as employed black men of comparable age and educational background living in non-VRA states in the years 1940 to 1960, but the discount shrank significantly—to 30%—in 1970. Some of this was due to occupational shifts that would not have been possible before the CRA.

These results comport with those found by Nobel laureate James Heckman, who is a leading supporter of the view that Title VII indeed mattered for the economic status of blacks, despite little funding to support its lofty goals. Part of the credit may be due to

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5. The sample used throughout the Article consists of male household heads aged 20 to 60 years old. Focusing on this group isolates the experience of the primary bread-winner in families that were headed by men. In a tiny number of cases, these individuals were recorded as spouses of household heads. Because market outcomes may differ across gender due to differences in non-market activities, like housework and child care, *see, e.g.*, Joni Hersch & Leslie S. Stratton, *Housework and Wages*, 37 J. OF HUM. RES. 217 (2002), I chose to focus on men only. In other work, I find that black women in 2000 participated more in the labor force than white women and their wages were close to parity after controlling for age, education, demographic, and household traits. Jenny Bourne Wahl, *Residential Segregation and Labor-Market Outcomes: The Importance of Race, Gender, and Marital Status* (Carleton College Department of Economics, Working Paper No. 2008-01, 2008), *available at* [apps.carleton.edu/curricular/econ/assets/2008\\_01.pdf](http://apps.carleton.edu/curricular/econ/assets/2008_01.pdf). Earlier work on female labor-market outcomes by race includes: Francine D. Blau & Andrea H. Beller, *Black-White Earnings Over the 1970s and 1980s: Gender Differences in Trends*, 74 REV. ECON. & STATS. 276 (1992) (finding that black women enjoyed even greater increases in annual earnings in the 1970s and 1980s than black men, as compared to their white counterparts) and James S. Cunningham & Nadja Zalokar, *The Economic Progress of Black Women, 1940–1980: Occupational Distribution and Relative Wages*, 45 INDUS. & LAB. REL. REV. 540 (1992).

6. Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437. The VRA was designed to remove remaining barriers to suffrage in states or districts where fewer than 50% of blacks were registered to vote. *Id.* States covered by the original legislation were Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia. *Id.* In addition, the 1965 Act covered several counties in North Carolina. *Id.* The Act was amended to include more jurisdictions in 1970 and 1975, including the states of Alaska, Arizona, and Texas as well as various municipalities and counties. Voting Rights Act Amendments of 1970, Pub. L. 91-285; Voting Rights Act Amendments of 1975, Pub. L. 94-73.

the voice given to blacks by the VRA. But, as Heckman and his co-author John Donohue noted, Title VII may also have offered protective cover for southern employers who benefited from an externally imposed requirement that they hire from a larger qualified labor pool.<sup>7</sup>

These findings also suggest that successful policy may start with something that seems simply symbolic. Four days before his death, Dr. Martin Luther King, Jr., spoke at the National Cathedral. There, he stated that “[g]reat documents are here to tell us something should be done.”<sup>8</sup> The critical part for policymakers, of course, is ensuring that substance follows symbol. Lawmakers did reinforce the CRA in the years just following its passage with, for example, the VRA, the Fair Housing Act of 1968,<sup>9</sup> and the Equal Employment Opportunity Act of 1972.<sup>10</sup> These measures truly did make a difference in the economic well-being of black Americans. Statistical analysis conducted in this Article indicates that the impact on black wages, particularly in states where racial disparity was most pronounced, was immediate, substantial, and lasting.

More recent data suggest, however, that the task to establish racial equality in the United States is as yet unfinished. As of 2010, employed black men still earned on average 23% less than employed white men of similar age and educational background.<sup>11</sup> Relative to white men, black men continue to face unemployment rates that are twice as large and incarceration rates more than six times as large.<sup>12</sup> What is more, nearly one-third of black, male household heads aged 20 to 60 do not participate in the labor force.<sup>13</sup>

Today’s path to parity is not as clear-cut as the one designed 50 years ago to deal with overt discrimination, and this Article does not attempt to construct it. Recent cases such as *Schuetz v. Coalition to Defend Affirmative Action*<sup>14</sup> and *Shelby County v. Holder*<sup>15</sup> suggest,

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7. John J. Donohue III & James Heckman, *Continuous Versus Episodic Change: The Impact of Civil Rights Policy on the Economic Status of Blacks*, 29 J. ECON. LITERATURE 1603, 1640 (1991).

8. King, *supra* note 1.

9. Fair Housing Act, Pub. L. No. 90-284, 82 Stat. 81 (1968).

10. Equal Employment Opportunity Act of 1964, Pub. L. 92-261, 86 Stat. 103.

11. *See infra* Part II.

12. *See infra* Parts III.A, C.

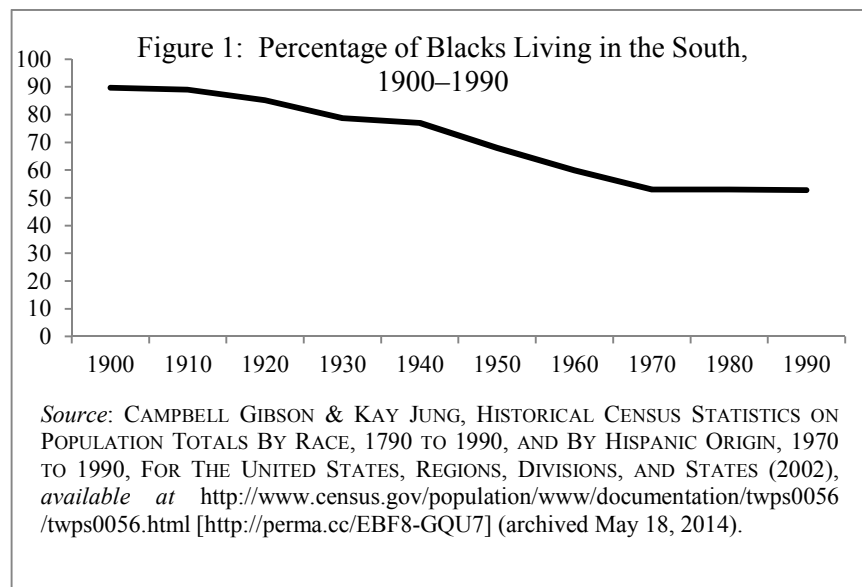
13. *See infra* Part III.B.

14. Transcript of Oral Argument, *Schuetz v. Coal. to Defend Affirmative Action* (U.S. Oct. 15, 2013) (No. 12-682), available at [http://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/12-682\\_1537.pdf](http://www.supremecourt.gov/oral_arguments/argument_transcripts/12-682_1537.pdf) [<http://perma.cc/Q94K-W5N5>] (archived Apr. 6, 2014); *Schuetz v. Coal. to Defend Affirmative Action, Integration & Immigrant Rights & Fight for Equal.*, 134 S. Ct. 1623 (2014) (upholding Michigan’s ban on using affirmative action for college admissions). Several states have such bans, and the Court seems likely to uphold them. Grant H. Blume & Mark C. Long, *Changes in Levels of Affirmative Action*

however, that sweeping legislative changes of the sort enacted half a century ago are unlikely to be the means used by 21st-century Americans to promote greater racial equality.

### I. PREDECESSORS OF TITLE VII

Figure 1 shows that 90% of American blacks lived in the South at the turn of the 20th century and more than half resided there in 1960.<sup>16</sup> So the story of black employment before and immediately after the CRA is predominantly a story of the South.



in *College Admissions in Response to Statewide Bans and Judicial Rulings*, 36 EDUC. EVAL. & POL. ANAL. (forthcoming 2014).

15. *Shelby Cnty., Ala. v. Holder*, 133 S. Ct. 2612 (2013). This case invalidated section 4 of the VRA, which required pre-clearance of changes in voting laws or practices in covered areas, leaving the law in limbo until Congress determines which parts of the country might be covered by it. *Id.*

16. The Bureau of the Census includes the following states (and federal district) in the South: Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma, and Texas. CAMPBELL GIBSON & KAY JUNG, HISTORICAL CENSUS STATISTICS ON POPULATION TOTALS BY RACE, 1790 TO 1990, AND BY HISPANIC ORIGIN, 1970 TO 1990, FOR THE UNITED STATES, REGIONS, DIVISIONS, AND STATES (2002).

Although most northern states had antidiscrimination laws before the CRA, southern states had nothing of the sort.<sup>17</sup> Labor-market discrimination often took the form of exclusion from jobs. Because many occupations at the time required “learning by doing,” this practice usually was not because blacks lacked skills or education.<sup>18</sup> Southern employers could be choosy in hiring partly because of artificially high wages imposed by New Deal policies.<sup>19</sup> The racial wage gap was bigger in areas with a larger black population, more plantation activity in the past, and segregationist preferences (as determined by the proportion of the population voting for Strom Thurmond in the presidential election of 1948).<sup>20</sup> In fact, the proportion of the slave population in a southern county in 1860 was one of the best predictors of the county’s racial wage gap in 1940.<sup>21</sup> To improve their economic well-being, many blacks simply left the South after about 1910.<sup>22</sup> At the beginning of the 20th century, only 4% of blacks born in the South lived elsewhere, but by 1950 this figure was more than 20%.<sup>23</sup>

On June 25, 1941, President Franklin D. Roosevelt issued Executive Order 8802, the first federal action to promote equal treatment in the labor market.<sup>24</sup> The order required federal agencies involved in defense production to ensure that job-training programs were administered without bias, prohibit discrimination by defense

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17. William J. Collins, *The Labor Market Impact of State-Level Anti-Discrimination Laws, 1940–1960*, 56 INDUS. & LAB. REL. REV. 244 (2003). The degree of enforcement of northern state laws was variable, but at least the laws were on the books.

18. James J. Heckman & Brook S. Payner, *Determining the Impact of Federal Antidiscrimination Policy on the Economic Status of Blacks: A Study of South Carolina*, 79 AM. ECON. REVIEW 138 (1989).

19. Gavin Wright, *The Civil Rights Revolution as Economic History*, 59 J. ECON. HIST. 267, 278 (1999). A cornerstone of Roosevelt’s first 100 days in office was the National Industrial Recovery Act, Pub. L. 73–90, 48 Stat. 195 (1933), which implemented a national minimum wage administered by the National Recovery Administration (NRA). Blacks referred to the NRA as the “Negro Removal Act” and “Negroes Ruined Again” for its effect on them. Ken I. Kersch, *Blacks and Labor—The Untold Story*, 148 NAT’L AFFAIRS 141 (2002). Although the Supreme Court struck down the NIRA in *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935), the Wagner Act, 49 Stat. 449 (1935), resuscitated many of its provisions.

20. William A. Sundstrom, *The Geography of Wage Discrimination in the Pre-Civil Rights South*, 67 J. ECON. HIST. 410, 412, 415 (2007). Of course, wage discrimination was only a part of what blacks suffered. Wright, *supra* note 19, at 269. As late as 1961, theater managers in Durham held firm against a boycott campaign to integrate movie theaters. *Id.*

21. Sundstrom, *supra* note 20, at 412.

22. William J. Collins, *When the Tide Turned: Immigration and the Delay of the Great Black Migration*, 57 J. ECON. HISTORY 607 (1997).

23. ROBERT A. MARGO, RACE AND SCHOOLING IN THE SOUTH, 1880–1950: AN ECONOMIC HISTORY 110 (1990).

24. *The Law*, EEOC, <http://www.eeoc.gov/eeoc/history/35th/thelaw> (last visited Mar. 24, 2014) [<http://perma.cc/79CT-49FZ>] (archived Apr. 6, 2014).

contractors, and establish the Fair Employment Practices Commission (FEPC).<sup>25</sup> Roosevelt released the order primarily to forestall a march on Washington planned by black activist A. Philip Randolph.<sup>26</sup>

Congress terminated the FEPC in July 1945, cheered on by blatant bigot Theodore Bilbo, a senator from Mississippi.<sup>27</sup> Bilbo had viciously denounced the Agency, calling particular attention to the racial and religious composition of its employees: “Do Senators propose that we spend \$446,000 of the people’s money for 66 Negroes, 12 Jews, a few gentiles, and two Japs?”<sup>28</sup>

A year and a half after the demise of the FEPC, President Harry Truman established the President’s Committee on Civil Rights via Executive Order 9808.<sup>29</sup> The Committee produced a report calling for anti-lynching laws, a permanent FEPC, a ban on poll taxes, and a stronger civil rights division in the Department of Justice.<sup>30</sup> When Truman asked Congress to enact these recommendations, southern senators threatened a filibuster.<sup>31</sup> So Truman went ahead on his own, appointing the first African-American federal judge and issuing Executive Order 9981 requiring full integration and equality of treatment across races within the armed forces.<sup>32</sup> These actions, coupled with the earlier need for workers for the war effort, boosted black earnings in the 1940s. Still, considerable disparity remained. The median wage of black males was 41% that of white males in 1939 and 54% in 1947.<sup>33</sup>

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25. Exec. Order No. 8802, 3 C.F.R. 957 (1938–1943), *available at* <http://www.ourdocuments.gov/doc.php?flash=true&doc=72> (providing a complete transcript of the order entitled “Prohibition of Discrimination in the Defense Industry”).

26. The march did not take place. For background, see Richard Wormser, *Proposed March on Washington (1941)*, PBS, [http://www.pbs.org/wnet/jimcrow/stories\\_events\\_march.html](http://www.pbs.org/wnet/jimcrow/stories_events_march.html) (last visited June 2, 2014) [<http://perma.cc/4NY2-NF4Z>] (archived Apr. 6, 2014).

27. Robert L. Fleegler, *Theodore G. Bilbo and the Decline of Public Racism, 1938-1947*, 66 J. MISS. HIST. 1, 15 (2006).

28. 79 CONG. REC. S6812 (1945).

29. Exec. Order No. 9808, 11 Fed. Reg. 14153 (Dec. 5, 1946).

30. THE PRESIDENT’S COMM. ON CIVIL RIGHTS, TO SECURE THESE RIGHTS: THE REPORT OF THE PRESIDENT’S COMMITTEE ON CIVIL RIGHTS (1947), *available at* <http://www.trumanlibrary.org/civilrights/srights1.htm> [<http://perma.cc/4WQX-FJBB>] (archived Apr. 6, 2014).

31. See Monroe Billington, *Civil Rights, President Truman and the South*, 58 J. NEGRO HIST. 127, 132–38 (1973).

32. *Id.*; Exec. Order No. 9981, 13 Fed. Reg. 4313 (July 26, 1948). For an account of the time period, see Billington, *supra* note 31.

33. Richard B. Freeman, *Changes in the Labor Market for Black Americans, 1948–72*, 1973 BROOKINGS PAPERS ON ECON. ACTIVITY 67 (1973).

During the administration of Dwight Eisenhower, Congress passed two pieces of legislation concerning civil rights, neither of which was particularly effective. The Civil Rights Act of 1957 established a commission to protect people from interference with their constitutional rights,<sup>34</sup> and the Civil Rights Act of 1960 gave the attorney general power to examine voting records and establish court-appointed referees to register voters.<sup>35</sup>

Blacks increasingly voiced their frustrations with the lack of progress, primarily via non-violent means such as the Birmingham campaign led by Dr. Martin Luther King, Jr., of the Southern Christian Leadership Conference and Fred Shuttlesworth of the Alabama Christian Movement for Human Rights.<sup>36</sup> The deaths of four African-American girls in the bombing of Birmingham's Sixteenth Street Baptist Church on September 15, 1963, breathed new life into the civil rights law proposed by President John F. Kennedy two months earlier.<sup>37</sup> Kennedy's own assassination two months after the Birmingham murders galvanized President Lyndon Johnson to push through legislation as a memorial to his predecessor, saying, "We have talked long enough in this country about equal rights. We have talked for one hundred years or more. It is time now to write the next chapter, and to write it in the books of law."<sup>38</sup> Despite strong opposition by southern Democrats such as Strom Thurmond (SC), Richard Russell (GA), and Robert Byrd (WV), President Johnson signed the Civil Rights Act of 1964 into law exactly 188 years after the Continental Congress declared independence from Great Britain.<sup>39</sup>

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34. Civil Rights Act of 1957, Pub. L. No. 85-315, 71 Stat. 634.

35. Civil Rights Act of 1960, Pub. L. No. 86-449, 74 Stat. 86.

36. For a brief description, see *Birmingham Campaign (1963)*, MARTIN LUTHER KING JR. & GLOBAL FREEDOM STRUGGLE, [http://mlk-kpp01.stanford.edu/index.php/encyclopedia/encyclopedia/enc\\_birmingham\\_campaign](http://mlk-kpp01.stanford.edu/index.php/encyclopedia/encyclopedia/enc_birmingham_campaign) [<http://perma.cc/UP2S-G98U>] (archived Apr. 6, 2014).

37. John F. Kennedy, Radio and Television Report to the American People on Civil Rights (June 11, 1963), available at <http://www.presidency.ucsb.edu/ws/?pid=9271> [<http://perma.cc/LM6F-6HF2>] (archived Apr. 6, 2014).

38. Lyndon B. Johnson, Address Before a Joint Session of the Congress (Nov. 27, 1963), available at <http://www.presidency.ucsb.edu/ws/?pid=25988> [<http://perma.cc/82T8-499H>] (archived Apr. 6, 2014).

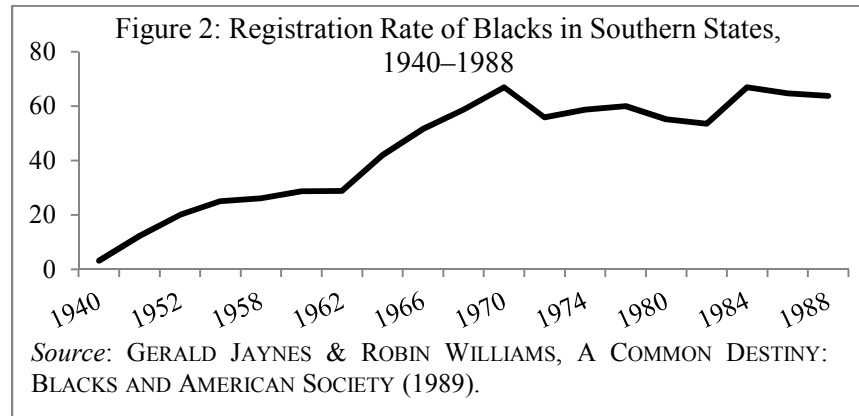
39. President Johnson signed the Act on July 2, 1963. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241. Although Independence Day is celebrated on July 4 in honor of the day the Continental Congress ratified the text of the Declaration of Independence, the vote to declare independence actually took place on July 2. Charles Warren, *Fourth of July Myths*, 2 WILLIAM & MARY Q. 237 (1945).



## II. HOW IMPORTANT WAS TITLE VII IN IMPROVING THE LABOR-MARKET EXPERIENCE OF BLACKS?

### A. The Significance of the Voting Rights Act of 1965

Relative wages for blacks markedly improved immediately after the passage of the CRA, despite the fact that the enforcement budget of the EEOC was initially quite small and the Commission had no power to initiate litigation.<sup>40</sup> A piece of law that did have teeth, however, was the VRA.<sup>41</sup> Figure 2 shows the enormous increase in black voter registration in southern states in the latter half of the 1960s, and Figure 3 offers a state-by-state breakdown.



40. The Commission did not gain this power until the Equal Opportunity Act of 1972. Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, 86 Stat. 103. This Act expanded coverage to entities with 15 or more workers and to state and local governments. *Id.* The budget and staff of the EEOC tripled from 1970 to 1975, and the number of Title VII cases increased tenfold. James P. Smith & Finis Welch, *Affirmative Action and Labor Markets*, 2 J. LAB. ECON. 269, 273 (1984); FARRELL BLOCH, ANTIDISCRIMINATION LAW AND MINORITY EMPLOYMENT: RECRUITMENT PRACTICES AND REGULATORY CONSTRAINTS 92 (1994); Kenneth Y. Chay, *The Impact of Federal Civil Rights Policy on Black Economic Progress: Evidence from the Equal Employment Opportunity Act of 1972*, 51 INDUS. & LAB. REL. REV. 608, 610 (1998).

41. As mentioned, the VRA's immediate predecessors—the Civil Rights Acts of 1957 and 1960, as well as a section of the 1964 Act—were not particularly effective. Civil Rights Act of 1957, Pub. L. No. 85-315, 71 Stat. 634; Civil Rights Act of 1960, Pub. L. No. 86-449, 74 Stat. 86; Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241. But the VRA of 1965 established much greater federal oversight of the election process. Richard B. Freeman, *Political Power, Desegregation, and Employment of Black Schoolteachers*, 85 J. POLI. ECON. 299, 304-05 (1977).

Figure 3: Black Registered Voters by Selected States

	% black of voting age	% black of registered voters	% black of voting age	% black of registered voters
	1960	1960	1970	1970
<b>SOUTH</b>				
Mississippi	35.5	4.3	30.3	27.3
Louisiana	28.2	13.7	26.0	20.7
South Carolina	29.2	9.0	25.4	23.2
Georgia	24.5	14.4	22.7	19.0
Alabama	26.0	7.0	22.1	18.1
Virginia	18.5	10.2	16.2	14.7
Arkansas	18.2	12.2	14.7	16.1
Tennessee	14.8	12.4	13.4	12.4
Florida	14.7	8.9	11.9	10.2
Texas	11.5	9.8	11.0	12.7
North Carolina	20.8	10.1	8.7	12.4
<b>NORTH</b>				
Illinois	9.3	8.6	11	10.2
New York	8.1	7.5	10.7	9.9
Michigan	8.7	8.1	10.2	9.5
New Jersey	7.7	7.1	9.1	8.5
Missouri	8.1	7.5	8.7	8.1
Ohio	7.6	7.0	8.2	7.6
California	4.2	4.0	6.1	5.7
Indiana	5.3	4.9	6.0	5.5

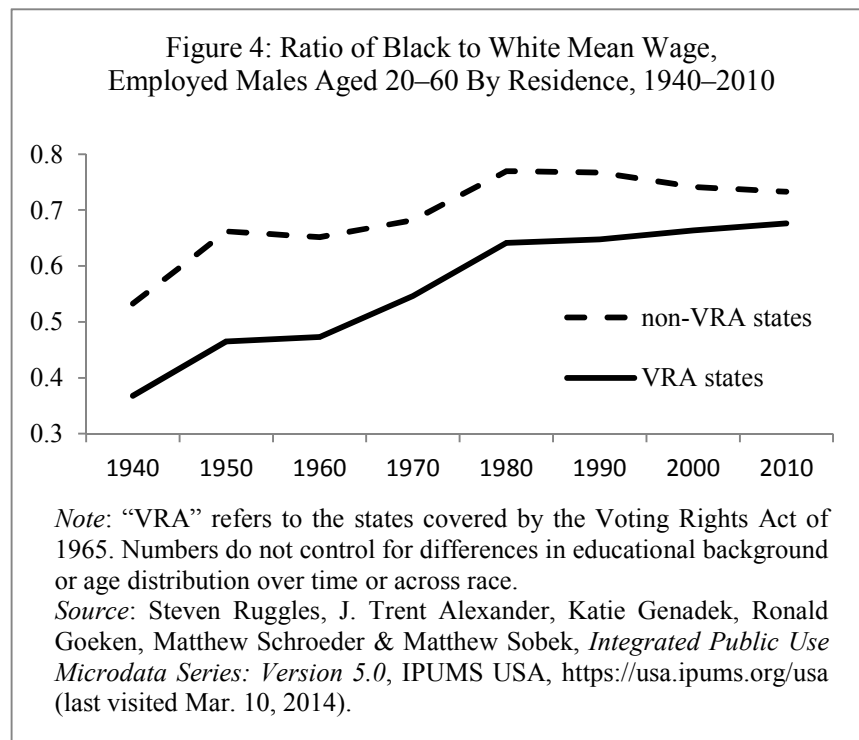
*Source:* Richard B. Freeman, *Political Power, Desegregation, and Employment of Black Schoolteachers*, 85 J. POLI. ECON. 299, 306 (1977).

Voting rights mattered because they meant that people could elect or oust officials based on how well they represented individuals' interests. Evidence shows that the VRA not only helped reinforce the tenets of Title VII but also aided in obtaining more school funding; improving street paving, garbage collection, and recreational facilities; and creating more equitable access to Federal Housing Administration loans and agricultural extension services.<sup>42</sup>

42. Wright, *supra* note 19, at 274. See also WILLIAM R. KEECH, THE IMPACT OF NEGRO VOTING: THE ROLE OF THE VOTE IN THE QUEST FOR EQUALITY (1968); Peter K. Eisinger, *Black Employment in Municipal Jobs: The Impact of Black Political Power*, 76 AM. POLI. SCI. REV. 380 (1982); LAWRENCE J. HANKS, THE STRUGGLE FOR BLACK POLITICAL EMPOWERMENT IN THREE GEORGIA COUNTIES (1987).

The passage of the VRA also virtually ended the extreme racist rhetoric of southern politicians like Theodore Bilbo.<sup>43</sup>

In the following three subsections, therefore, this Article looks closely at the differences between states that were covered by the VRA and those that were not.<sup>44</sup> Figure 4 depicts the ratio of average wages for employed black men aged 20 to 60 to those of their white counterparts, graphed separately by region but not controlled for age distribution or educational levels over time or across race. The ratios in both regions increased through the 1940s, remained stagnant in the 1950s, and then jumped in the 1960s (particularly in the VRA states). The ratios grew closer in the 1960s and thereafter, indicating a more uniform relationship between black and white wages across regions.



43. Wright, *supra* note 19, at 274; HOWARD SCHUMAN, CHARLOTTE STEEH, LAWRENCE BOBO & MARIA KRYSAN, RACIAL ATTITUDES IN AMERICA: TRENDS AND INTERPRETATIONS (1997). Bilbo himself did not live to see the passage of the CRA and the VRA. Fleegler, *supra* note 27, at 26. He died of throat cancer on August 21, 1947. *Id.*

44. Because much of North Carolina was covered by the VRA, I included it in the VRA states.

*B. Possible Explanations for the Narrowing Racial Wage Gap*

Some scholars have ascribed only a minimal role to the CRA in improving labor-market conditions for blacks during the mid-1960s, crediting the tight labor markets of the period for narrowing the racial wage gap.<sup>45</sup> Others have attributed the gains to improvements in the quantity and quality of schooling received by blacks.<sup>46</sup> Some have also speculated that increases in relative earnings for blacks were due in part to low-skilled blacks dropping out of the labor force.<sup>47</sup> In contrast to these researchers, James Heckman argued in a series of papers that the CRA was in fact quite significant in advancing the labor-market status of blacks.<sup>48</sup>

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45. James Tobin, *On Improving the Economic Status of the Negro*, 94 DAEDALUS 878 (1965); Freeman, *supra* note 33; Wayne Vroman, *Changes in Black Workers' Relative Earnings: Evidence from the 1960s*, in 2 PATTERNS OF RACIAL DISCRIMINATION 167 (G. von Furstenberg, A. Horowitz & B. Harrison eds., 1974); Wayne Vroman, *Changes in the Labor Market Position of Black Men Since 1964*, in INDUSTRIAL RELATIONS RESEARCH ASSOCIATION PROCEEDINGS OF THE TWENTY-SEVENTH WINTER MEETING 294 (1975) [hereinafter Vroman, *Changes in the Labor Market*]; WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* (2d ed. 2012).

46. Finis Welch, *Education and Racial Discrimination*, in DISCRIMINATION IN LABOR MARKETS 43 (Orley Ashenfelter & Albert Rees eds., 1973); James P. Smith & Finis R. Welch, *Black-White Male Wage Ratios: 1960-70*, 67 AM. ECON. REV. 323 (1977) [hereinafter Smith & Welch, *Black-White Male Rate Ratios: 1960-70*]; James P. Smith, *Race and Human Capital*, 74 AM. ECON. REV. 685 (1984); JAMES P. SMITH & FINIS R. WELCH, *CLOSING THE GAP: FORTY YEARS OF ECONOMIC PROGRESS FOR BLACKS* (1986), available at <http://www.rand.org/content/dam/rand/pubs/reports/2007/R3330.pdf> [<http://perma.cc/DLL5-2WNB>] (archived Apr. 6, 2014); James P. Smith & Finis R. Welch, *Black Economic Progress After Myrdal*, 27 J. ECON. LITERATURE 519 (1989).

47. Chay, *supra* note 40.

48. See Heckman & Payner, *supra* note 18; James J. Heckman, *The Central Role of the South in Accounting for the Economic Progress of Black Americans*, 80 AM. ECON. REV. 242 (1990); Donohue & Heckman, *supra* note 7; see also Freeman, *supra* note 33; Andrea H. Beller, *The Economics of Enforcement of an Anti-Discrimination Law: Title VII of the Civil Rights Act of 1964*, 21 J. L. & ECON. 359 (1978); Richard B. Freeman, *Black Economic Progress After 1964: Who Has Gained and Why?*, in STUDIES IN LABOR MARKETS 247 (Sherwin Rosen ed., 1981), available at <http://www.nber.org/chapters/c8913.pdf> [<http://perma.cc/7TQ6-HRC4>] (archived Apr. 6, 2014); Vroman, *Changes in the Labor Market*, *supra* note 45; Charles Brown, *Black-White Earnings Ratios Since the Civil Rights Act of 1964: The Importance of Labor Market Dropouts*, 99 Q. J. ECON. 31 (1984); John Bound & Richard Freeman, *Black Economic Progress: Erosion of the Post-1965 Gains in the 1980s?*, in THE QUESTION OF DISCRIMINATION: RACIAL INEQUALITY IN THE U.S. LABOR MARKET 32 (Steven Shulman & William Darity eds., 1989) (using Current Population Survey data); David Card & Alan B. Krueger, *Trends in Relative Black-White Earnings Revisited*, 83 AM. ECON. REV. 85 (1993) (finding a significant break in 1964 using Social Security earnings data from 1957 to 1974).

To isolate the influence of civil rights legislation on black earnings, I ran a series of regressions on the natural log of real annual wages, controlling for age, race (where relevant), educational level, region of residence, and time period, among other things.<sup>49</sup> One set of regressions included only black male household heads aged 20 to 60.<sup>50</sup> Another set included both black and white male household heads aged 20 to 60.<sup>51</sup> The coefficients from these regressions allowed a comparison of wages across groups, as well as an estimation of growth rates in real wages over time for different groups. These in turn permitted me to evaluate some of the above-mentioned explanations for the improved labor-market experience of blacks during the latter half of the 1960s.

*C. A Jump in Black Relative Earnings in the 1960s, Followed by Steady Improvement*

Black men who lived in VRA states in 1940, 1950, and 1960 earned less than half of what black men in non-VRA states of similar age and educational background received. But, as Figure 5 shows, the reduction in wages experienced by blacks relative to whites dramatically shrank to only 30% in 1970.<sup>52</sup> This gap steadily diminished over time, and the reduction was down to 5.4% in 2010. These numbers suggest that the labor-market experience of black men living in VRA states was quite different from that of black men living elsewhere until the CRA and VRA were passed. Immediately following the legislation, the labor-market status for VRA-state blacks improved significantly in comparison to their non-VRA-state counterparts, with gradual improvement following in later decades.

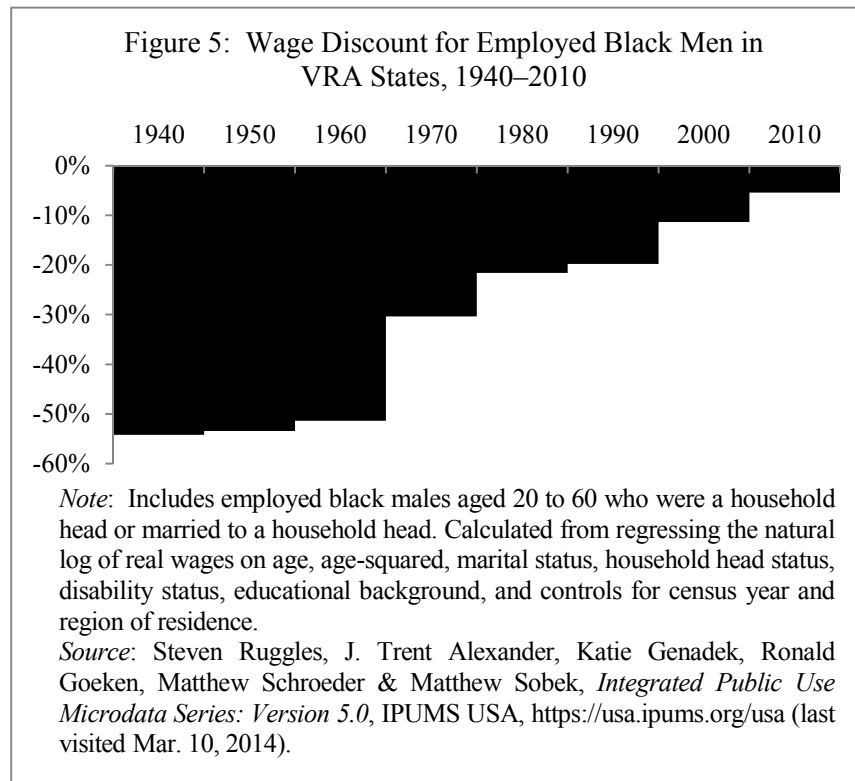
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49. The regressions were also controlled for age-squared, marital status, and work disabilities. I controlled for household head status as well, to account for the very few observations that listed the worker as the spouse of a household head. I converted all wage figures to dollars of 2010 to control for changes in price levels over time. In all cases, signs on coefficients were as expected—wages were higher for married men, household heads, and those without a disability. Wages were positively related to age and number of years of schooling and negatively related to age-squared.

50. These were difference-in-difference regressions with the comparison group being black high school graduates in non-VRA states in 2010.

51. These regressions were difference-in-difference-in-difference regressions with the comparison group being white high school graduates in non-VRA states in 2010.

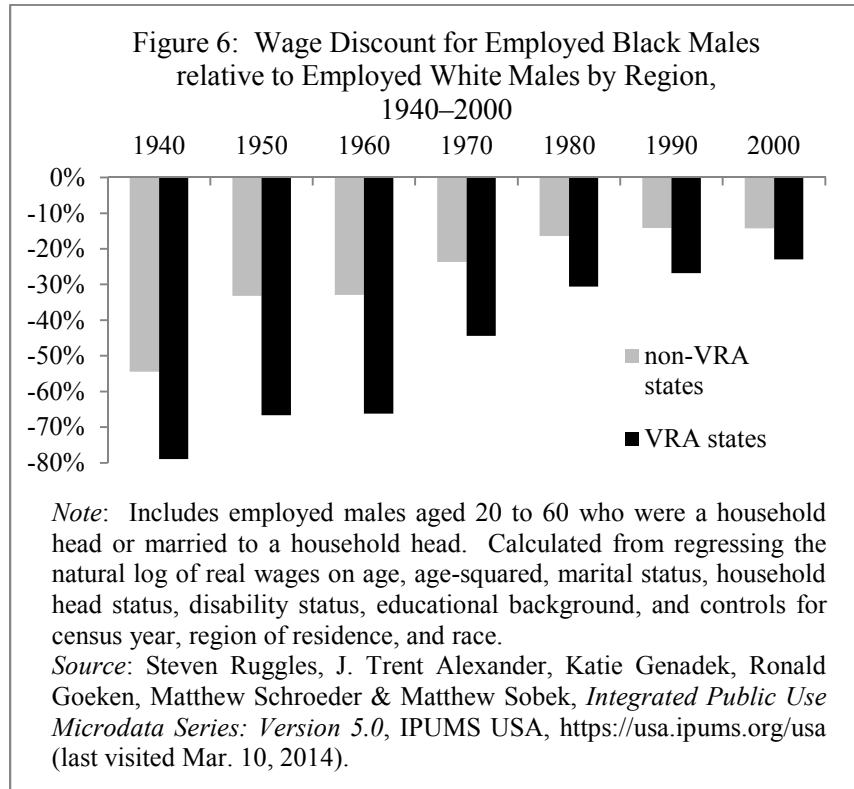
52. The reduction in wages for white males living in VRA states (as compared to wages for white males living in non-VRA states) was 28% in 1940, 19% in 1950, 18% in 1960, and 10% in 1970.



Black men living in VRA states in 1940 earned 79% less than white men of similar ages and educational backgrounds; the figure was 55% for men living in non-VRA states. In 1960 the discount was still 66% in VRA states although it had fallen to 33% in non-VRA states.<sup>53</sup> But in 1970, the discount shrank abruptly to 44% in VRA states (24% in non-VRA states). As shown by Figure 6, blacks' earnings in VRA states have continued to improve somewhat, relative to that of comparable whites, while the racial gap in non-VRA states has remained about the same since 1980.<sup>54</sup>

53. Donohue & Heckman, *supra* note 7, at 1614 (finding that in 1960, southern black men aged 30 to 40 earned 57% less than white southerners, while the figure for the North was 32%).

54. The year 2010 is not reported because, by construction, all groups in a difference-in-difference-in-difference regression are compared to a single group—here, white males living in non-VRA states in 2010. This allows for cross-comparison of other groups as well, except in the base year. Other studies have found that the convergence in black–white earnings reversed during the 1980s, primarily due to increased returns to human capital and the relatively fewer average years of schooling for blacks. Chinhui Juhn, Kevin M. Murphy & Brooks Pierce, *Accounting for the Slowdown in Black–White Wage Convergence*, in *WORKERS AND THEIR WAGES: CHANGING PATTERNS IN THE UNITED STATES* 107 (C. Juhn, K. Murphy & B. Pierce eds., 1991), [http://www.class.uh.edu/faculty/cjuhn/Papers/docs/JMP\\_1991\\_corrected.pdf](http://www.class.uh.edu/faculty/cjuhn/Papers/docs/JMP_1991_corrected.pdf) [<http://perma.cc/FP6R-B2W5>]



Figures 5 and 6 suggest two things: blacks' relative earnings continued to rise even during recessions, including the one in the mid-1970s, and relative earnings for black men improved substantially from 1960 to 1970, particularly for those living in VRA states. The first implies that the "tight-labor-market" hypothesis does not appear to be the primary explanation for the boost in black earnings during the 1960s because improvement continued even during economic downturns.<sup>55</sup> The second suggests

(archived Apr. 6, 2014); John Bound & Richard B. Freeman, *What Went Wrong? The Erosion of Relative Earnings and Employment Among Young Black Men in the 1980s*, 107 Q. J. ECON. 201 (1992); James P. Smith, *Affirmative Action and the Racial Wage Gap*, 83 AM. ECON. REV. 79 (1993); David Card & Thomas Lemieux, *Wage Dispersion, Returns to Skill, and Black-White Wage Dispersion*, 74 J. ECONOMETRICS 319 (1996). My estimates control for educational background, so this graph effectively compares blacks to whites who had similar years of schooling.

55. Richard Butler & James J. Heckman, *The Government's Impact on the Labor Market Status of Black Americans: A Critical Review*, in EQUAL RIGHTS &

that increased education is not the main reason for higher relative wages for black men because the underlying regressions control for the level of schooling. Not only that, high-school dropouts comprise by far the majority of black men aged 20 to 60 up through 1970. The next Section explores in more detail the role of education in closing the racial wage gap.

#### *D. A Closer Look at The Role of Education*

Before the CRA, the typical black American male had less than a high school education. In 1940, those who had dropped out before (sometimes long before) high school graduation comprised 96% of black men living in VRA states and 90% of those residing in non-VRA states.<sup>56</sup> The figures are 94% and 83% for 1950, 86% and 73% for 1960, and 72% and 60% for 1970.<sup>57</sup> By 1970, the Integrated Public Use Microdata Series (IPUMs) data show that high school graduates accounted for 18% of black males living in VRA states (27% in non-VRA states).<sup>58</sup> Despite the ruling in *Brown v. Board of Education*,<sup>59</sup> most blacks went to segregated schools through the early 1970s, particularly in the South.<sup>60</sup>

Part of the reason blacks invested so little in schooling was that education simply did not pay off. Gavin Wright reported that, when the Rosenwald Fund tried to support black high schools in the South in the 1920s and 1930s, it did a survey of “black jobs” so as to adopt an appropriate curriculum.<sup>61</sup> The survey found that no job for which a black would be hired required a high school education.<sup>62</sup> So black schools simply did not offer courses like stenography, accounting, bookkeeping, or even typing.<sup>63</sup> As late as the 1960s, auto-mechanic training appeared only in white schools, which explains why no blacks found jobs in the Ford plants located in Atlanta, Dallas, Memphis, and Norfolk in 1957 and 1958.<sup>64</sup>

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INDUSTRIAL RELATIONS 235 (L. Hausman et al. eds., 1977); Marshall H. Medoff, *Discrimination and the Occupational Progress of Blacks Since 1950*, 44 AM. J. ECON. & SOC. 295, 300–01 (1985).

56. See *supra* note 4.

57. See *supra* note 4.

58. Blacks with at least a college diploma constituted only 1% of all blacks in VRA states in 1940 and only 2% in non-VRA states. By 1970, the percent had climbed to only 5% in both regions.

59. 347 U.S. 483 (1954).

60. Nathan D. Grawe & Jenny Bourne Wahl, *Blacks, Whites, and Brown: Effects on the Earnings of Men and Their Sons*, 13 J. AFR. AM. STUD. 455 (2009).

61. Wright, *supra* note 19, at 279.

62. *Id.*

63. *Id.*

64. HERBERT NORTHRUP, THE NEGRO IN THE AUTOMOBILE INDUSTRY: RACIAL POLICIES OF AMERICAN INDUSTRY, REPORT NO. 1, at 67 (1968).



Some have downplayed the school-quality explanation for increased black wages, saying that black schools still had the same teachers even though they may have been paid more after the CRA.<sup>65</sup> Yet the possibilities opened by *Brown* may have had incentive effects for black students (and, more importantly, their parents): The expectation of more wide-ranging labor market opportunities could have encouraged greater effort in school and thus more human capital to bring to a job.<sup>66</sup>

To shed light on this issue, David Card and Alan Krueger documented an increase in the average number of years spent in school by blacks, better quality of black schools, and better returns to education for blacks over the 1960s and 1970s, with the last being most important.<sup>67</sup> They determined that additional and improved schooling for blacks explains 15–20% of the narrowing of the racial earnings gap between 1960 and 1980.<sup>68</sup>

To further investigate the role of education in my sample, I ran separate regressions for men with differing levels of schooling. Figure 7 shows the annual growth rate in real wages for each educational category by race and region, controlling for age and other demographic characteristics. Although I cannot control explicitly for changes in school quality or student effort over time, the results are nevertheless suggestive.<sup>69</sup> Significantly, the growth rate in real wages was largest for blacks in VRA states, with an especially notable bump in the 1960s for men with less than a high school education.<sup>70</sup>

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65. Donohue & Heckman, *supra* note 7, at 1621.

66. Grawe & Bourne Wahl, *supra* note 60.

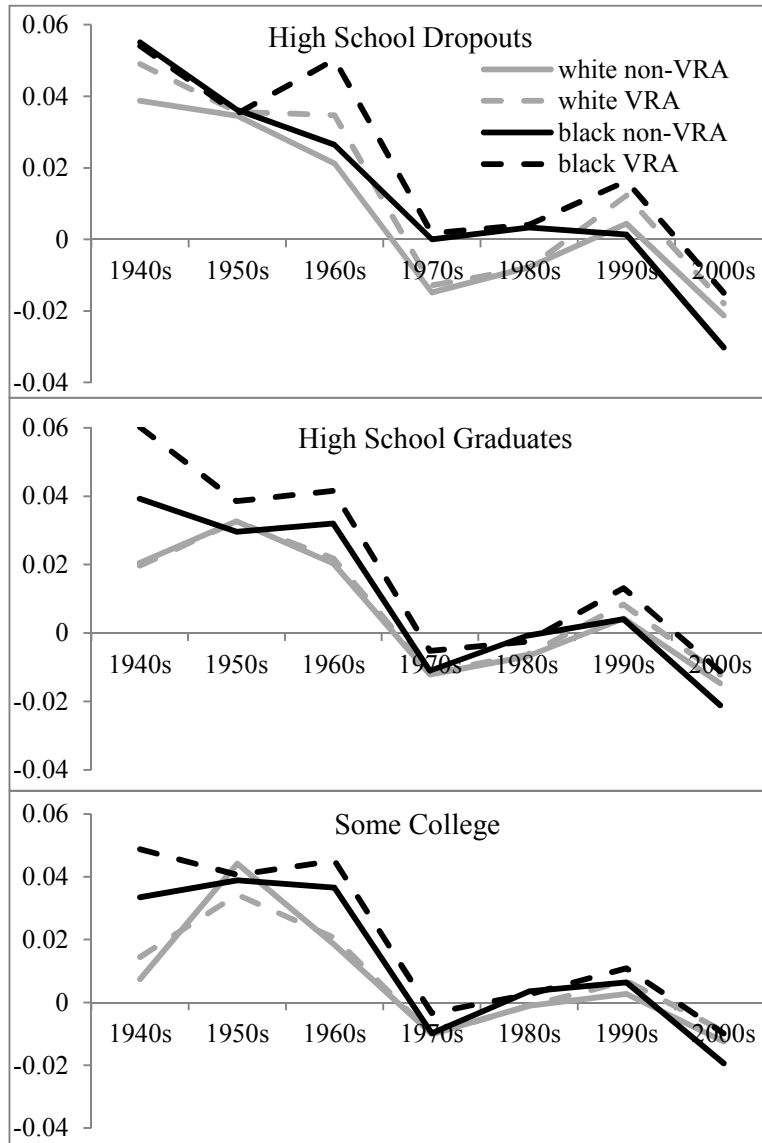
67. David Card & Alan B. Krueger, *School Quality and Black-White Relative Earnings: A Direct Assessment*, 107 Q. J. ECON. 151, 153 (1992).

68. *Id.*

69. Some empirical work indicates that racial wage gaps disappear when measures of ability—such as scores on the Armed Forces Qualification Test—are included. See June O’Neill, *The Role of Human Capital in Earnings Differences Between Black and White Men*, 4 J. ECON. PERSP., Autumn 1990, at 25; Derek A. Neal & William R. Johnson, *The Role of Pre-market Factors in Black-White Wage Differences*, 104 J. POLI. ECON. 869 (1996); Joseph G. Altonji & Rebecca M. Blank, *Race and Gender in the Labor Market*, in 3 HANDBOOK OF LABOR ECONOMICS 3143 (Orley C. Ashenfelter & David Card eds., 1999); Christopher R. Bollinger, *Measurement Error in Human Capital and the Black-White Wage Gap*, 85 REV. ECON. & STAT. 578 (2003).

70. Richard J. Butler, James J. Heckman & Brook Payner, *The Impact of the Economy and the State on the Economic Status of Blacks: A Study of South Carolina*, in MARKETS IN HISTORY: ECONOMIC STUDIES OF THE PAST 231 (David W. Galenson ed., 1989) (finding that blacks in blue-collar jobs accrued the greatest real relative wage gain in this decade).

Figure 7: Annual Growth Rate in Real Wages by Race, Region, and Educational Status, Employed Men Aged 20 to 60



*Note:* Results of regressing the natural log of wages for employed male household heads aged 20 to 60 on age, age-squared, marital status, disability status, and dummy variables reflecting race, region of residence, and time period.

*Source:* Steven Ruggles, J. Trent Alexander, Katie Genadek, Ronald Goeken, Matthew Schroeder & Matthew Sobek, *Integrated Public Use Microdata Series: Version 5.0*, IPUMS USA, <https://usa.ipums.org/usa> (last visited Mar. 10, 2014).

*E. So What Accounted for the Improvement in Black Relative Earnings?*

If tight labor markets and increased years of schooling cannot fully explain the jump in black earnings in the 1960s, the civil rights legislation enacted during that decade provides a plausible explanation for altered labor-market conditions. One suggestion is that the laws gave southern employers permission to do what they may have wanted to do but could not undertake individually for fear of reprisal by customers or existing workers. No single southern firm could hope to profit by hiring qualified blacks if its revenues fell more than its costs due to disgruntled racist employees or patrons who could take their skills or business elsewhere. But, if a law required all (or at least all larger) employers to treat races equally, firms could grumble about compliance but secretly reap the benefits of an expanded labor force.<sup>71</sup>

What exactly was the means by which blacks made such large strides in relative earnings in the 1960s, particularly in VRA states? The main mechanisms appear to be the unwinding of occupational segregation, substantial desegregation of southern firms, and a move by blacks to larger employers.

James Heckman and Brook Payner conducted the leading case study on the dismantling of occupational segregation.<sup>72</sup> In the 1940s, 91% of blacks worked in low-paying occupations.<sup>73</sup> Heckman and Payner focused on the textile industry in South Carolina, which employed 80% of all state workers in manufacturing in 1940 and sold about 5% of its products to the federal government.<sup>74</sup> Although nearly a quarter of adult blacks in the state were sufficiently well educated to work in the industry by 1960, they simply were not hired.<sup>75</sup> But, between 1960 and 1980, the percentage of blacks employed in textiles jumped to 15%.<sup>76</sup> Heckman and Payner attributed this primarily to the CRA (and Executive Order 11246, which forbade discrimination by government contractors).<sup>77</sup> The

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71. See Wright, *supra* note 19.

72. Heckman & Payner, *supra* note 18. See also Medoff, *supra* note 55.

73. Gerald D. Jaynes, *The Labor Market Status of Black Americans: 1939–1985*, 4 J. ECON. PERSP., Autumn 1990, at 9.

74. Heckman & Payner, *supra* note 18, at 140. Workers in the industry still comprised 40% of all manufacturing employees in the state in 1980. *Id.*

75. *Id.* at 140.

76. *Id.* at 143. Some evidence indicates that occupational segregation increased during the 1980s and 1990s with the relaxation of federal oversight and regulation. See generally BARBARA R. BERGMANN, IN DEFENSE OF AFFIRMATIVE ACTION (1996).

77. Exec. Order No. 11246, 30 Fed. Reg. 12319 (Sept. 24, 1965).

growth in real wages depicted in Figure 7, particularly for men with less than a high school education, is consistent with the findings of Heckman and Payner. The movement away from occupational segregation was reinforced by the decision in *Griggs v. Duke Power Co.*, which allowed evidence of disparate racial impact to indicate discrimination.<sup>78</sup>

More generally, desegregation within firms occurred across the South. Between 1940 and 1965, more than 90% of new manufacturing jobs had gone to whites even though nearly half the population was black.<sup>79</sup> In 1966, more than 50% of EEOC-reporting workplaces had no black male employees (more than 70% had no black females).<sup>80</sup> After the CRA, integration came quickly.<sup>81</sup> This mostly occurred in the private sector because blacks had already found some success in the public sector.<sup>82</sup> The percentage of male managers who were black went from 2.1% to 3.5% from 1964 to 1972.<sup>83</sup>

Not only did blacks move into new occupations and new firms, they migrated to the larger firms covered by the CRA.<sup>84</sup> Research has established that larger firms generally pay higher wages, so blacks could doubly reap benefits from their newfound ability to obtain employment at bigger establishments.<sup>85</sup>

#### *F. The Relevance of Voting with One's Feet*

Perhaps the strongest evidence that the CRA made a difference, particularly in states covered by the VRA, is that blacks stopped

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78. *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); William M. Wiecek & Judy L. Hamilton, *Beyond the Civil Rights Act of 1964: Confronting Structural Racism in the Workplace*, 74 LA. L. REV. 1095 (2014) (offering a detailed discussion about how the *Griggs* ruling has eroded over time).

79. Wright, *supra* note 19, at 279.

80. Donald Tomaskovic-Devey & Kevin Stainback, *Discrimination and Desegregation: Equal Opportunity Progress in U.S. Private Sector Workplaces Since the Civil Rights Act*, 609 ANNALS AM. ACAD. POLI. & SOC. SCI. 49, 63–65, 75 (2007).

81. Donohue & Heckman, *supra* note 7, at 1606; Orley Ashenfelter & James Heckman, *Measuring the Effect of an Antidiscrimination Program* (Princeton U. Indus. Rel. Sec., Working Paper No. 52, 1976), available at <http://arks.princeton.edu/ark:/88435/dsp01rj430455t>; Tomaskovic-Devey & Stainback, *supra* note 80.

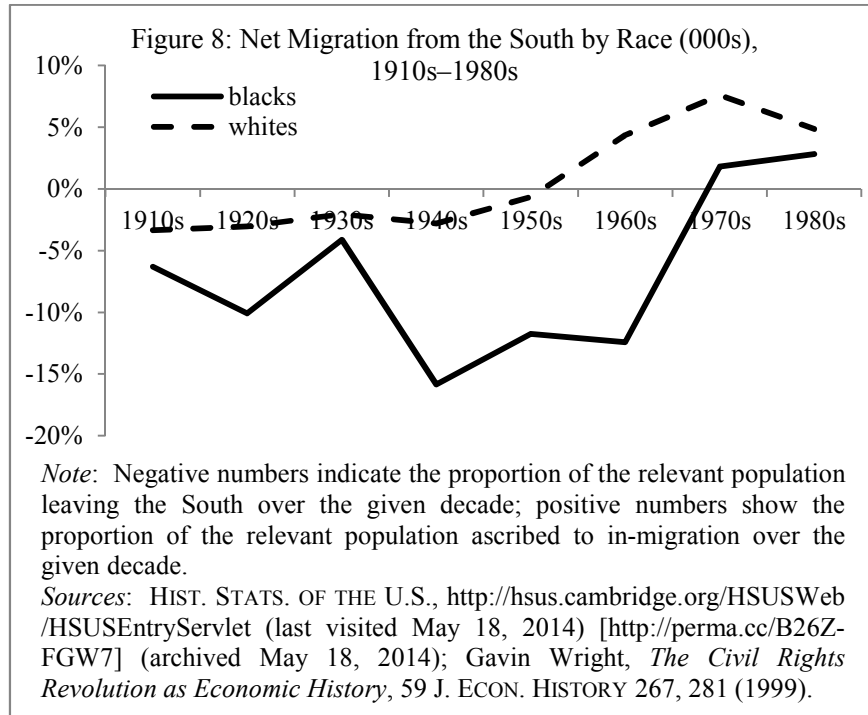
82. William J. Carrington, Kristin McCue & Brooks Pierce, *Using Establishment Size to Measure the Impact of Title VII and Affirmative Action*, 35 J. HUM. RESOURCES 503 (2000).

83. Freeman, *supra* note 33, at 86.

84. Ashenfelter & Heckman, *supra* note 81; Jonathan S. Leonard, *The Impact of Affirmative Action on Employment*, 2 J. LAB. ECON. 439 (1984); Heckman & Payner, *supra* note 18; Carrington et al., *supra* note 82. See also Chay, *supra* note 40 (finding that blacks benefited when they moved to smaller firms once the EEOC started covering them).

85. Charles Brown & Marshall Medoff, *The Employer Size–Wage Effect*, 97 J. POLI. ECON. 1027 (1989).

moving out of the South. In fact, they began a reverse migration that continues to this day.<sup>86</sup> Figure 8 shows net migration from the South for blacks and whites. More than 1.5 million blacks left the South during the 1940s, comprising more than 15% of the South's black population. By the 1970s, however, the flow had reversed, with net in-migration adding to the South's black population.<sup>87</sup>



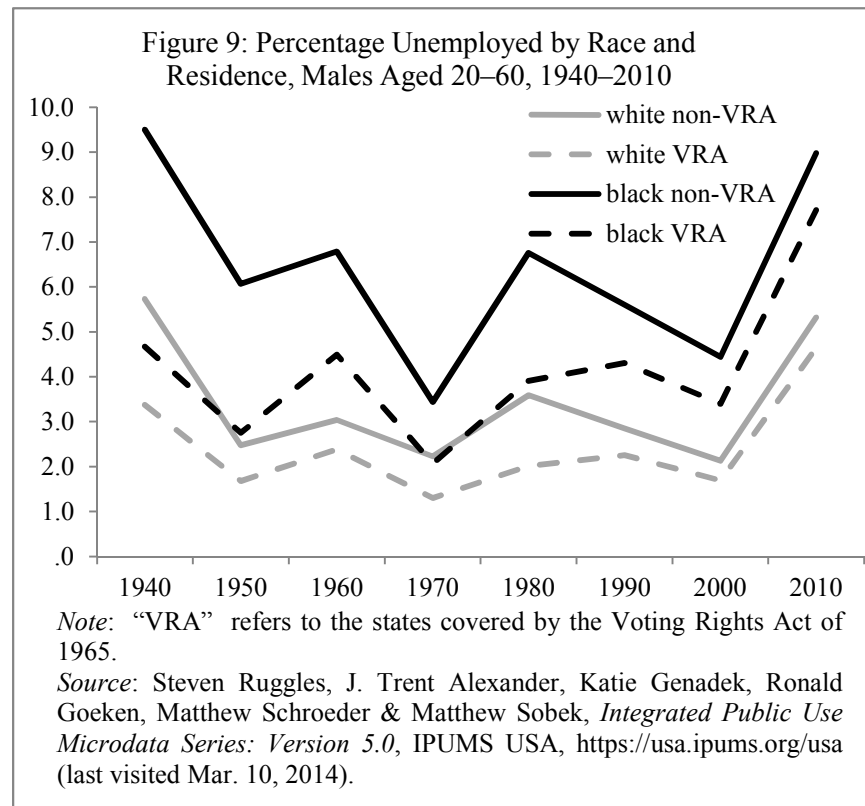
86. Donohue & Heckman, *supra* note 7, at 1604. On more recent patterns of migration, see Calvin Beale & Glenn Fuguitt, *Migration of Retirement-Age Blacks to Nonmetropolitan Areas in the 1990s*, 76 RURAL SOC. 31 (2011); William H. Frey & Kao-Lee Liaw, *Migration Within the United States: Role of Race-Ethnicity*, 6 BROOKINGS-WHARTON PAPERS ON URB. AFF. 207 (2005); WILLIAM H. FREY, CTR. ON URBAN & METRO. POLICY, *THE NEW GREAT MIGRATION: BLACK AMERICANS' RETURN TO THE SOUTH, 1965–2000* (2004), [http://www.brookings.edu/~media/research/files/reports/2004/5/demographics%20frey/20040524\\_frey.pdf](http://www.brookings.edu/~media/research/files/reports/2004/5/demographics%20frey/20040524_frey.pdf) [<http://perma.cc/JT46-27U8>] (archived Apr. 6, 2014).

87. This may have indirectly contributed to the narrowing of the wage gap between blacks in VRA and non-VRA states if, as seems likely, blacks who migrated out of VRA states generally tended to have greater ability and confidence. If these individuals remained in the South after the CRA rather than heading north, regional differences in black productivity arguably shrank, leading to a concomitantly smaller difference in wages among blacks across regions. This argument cannot explain the reduction in the wage gap between blacks and whites in both regions after the passage of the CRA, however.

### III. WHAT ABOUT MEASURES OF WELL-BEING OTHER THAN EARNINGS?

#### A. Unemployment

The march on Washington in August 1963 by thousands of black Americans (joined by many whites) was about civil rights, but it was also about employment; it was styled the “March on Washington for Jobs and Freedom.”<sup>88</sup> Black male earnings have improved relative to those of whites, particularly in VRA states, but Figure 9 makes clear that the same cannot be said for unemployment rates. As one scholar put it, the black unemployment rate is always double that of whites, in good times or bad.<sup>89</sup> The civil rights legislation of the mid-1960s and beyond has done little to change that relationship.



88. For a copy of the official program from the March, see *Official Program for the March on Washington (1963)*, 100 MILESTONE DOCUMENTS, <http://www.ourdocuments.gov/doc.php?doc=96> (last visited June 2, 2014) [<http://perma.cc/5XHV-4GS6>] (archived June 2, 2014).

89. Mathew Forstater, *From Civil Rights to Economic Security: Bayard Rustin and the African-American Struggle for Full Employment, 1945–1978*, 36 INT’L J. POLI. ECON. 63 (2007).

*B. Non-Participation in the Labor Force*

Earnings and unemployment rates do not tell the full story of the labor market. Unemployment rates include only those who participate in the labor force. For a variety of reasons, some people do not participate at all. They could be attending school, caring for family members, or suffering from a disability. Or they may not participate because the alternatives are more financially attractive—subsisting on transfer payments or engaging in illegal activities.

Lyndon Johnson's Great Society income-maintenance programs arose at about the same time as the CRA,<sup>90</sup> and some researchers have speculated that the convergence in black-white wages during the 1960s could have been attributable to low-skilled and poorly educated blacks dropping out of the labor force.<sup>91</sup> My data do not permit an examination of this possibility, but other scholars have evaluated the role of non-participation. They find that, even controlling for labor-market dropouts, the improvement in black relative wages during the 1960s remains.<sup>92</sup>

Today is perhaps another story. Figure 10 shows that labor-force nonparticipation rates have climbed, particularly for black men.<sup>93</sup> Some research suggests that labor-market dropouts may be driving most of the convergence in wages observed over the last several years.<sup>94</sup> Chinhui Juhn reported that, in 1967, about 13% of black men with 1 to 30 years of experience were not employed in a typical week. In 1999, the figure was 21%.<sup>95</sup> Over 14% of experienced

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90. For a discussion of these programs, see Emiel W. Owens, *Income Maintenance Programs in the 1960's: A Survey*, 54 AM. J. AGRIC. ECON. 342 (1972).

91. Brown, *supra* note 48; Smith & Welch, *Black-White Male Rate Ratios: 1960-70*, *supra* note 46; Chinhui Juhn, *Labor Market Dropouts and Trends in the Wages of Black and White Men*, 56 INDUS. & LAB. REL. REV. 643 (2003).

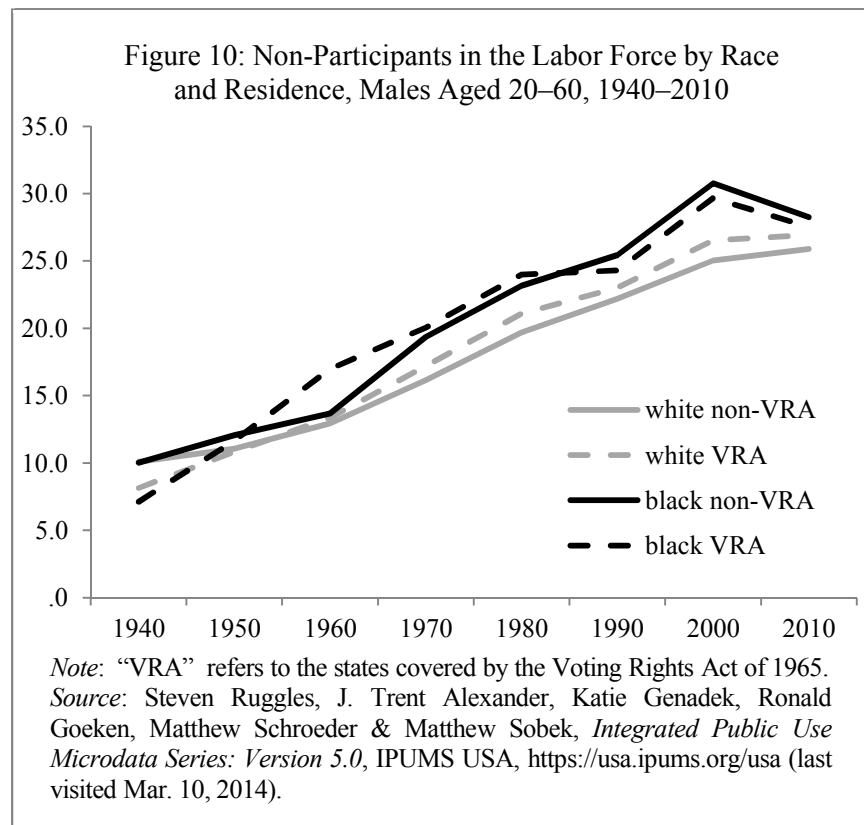
92. Juhn, *supra* note 91, at 643.

93. I would have liked to examine the hours and weeks worked over time by race, but unfortunately some samples do not include these variables. All samples do, however, contain an employment status variable that indicates whether the person was employed, unemployed, or not participating in the labor force at the time he responded to the census. For more detailed information about unemployment and labor force participation today, see U.S. BUREAU OF LABOR STATISTICS, LABOR FORCE CHARACTERISTICS BY RACE AND ETHNICITY, 2011 (2013), <http://www.bls.gov/cps/cpsrace2011.pdf> [<http://perma.cc/P79Y-XUG6>] (archived Apr. 6, 2014).

94. Jaynes, *supra* note 73, at 10. See also Finis Welch, *The Employment of Black Men*, 8 J. LAB. ECON. S26 (1990); Chinhui Juhn, *Decline of Male Labor Market Participation: The Role of Declining Market Opportunities*, 107 Q. J. ECON. 79 (1992).

95. Juhn, *supra* note 94.

black men did not work over the entire year of 1999.<sup>96</sup> Elsewhere, I have found that single, black, male household heads were employed at much lower rates than comparable whites in 2000. This was especially true for men with less education.<sup>97</sup>



### C. Incarceration Rates

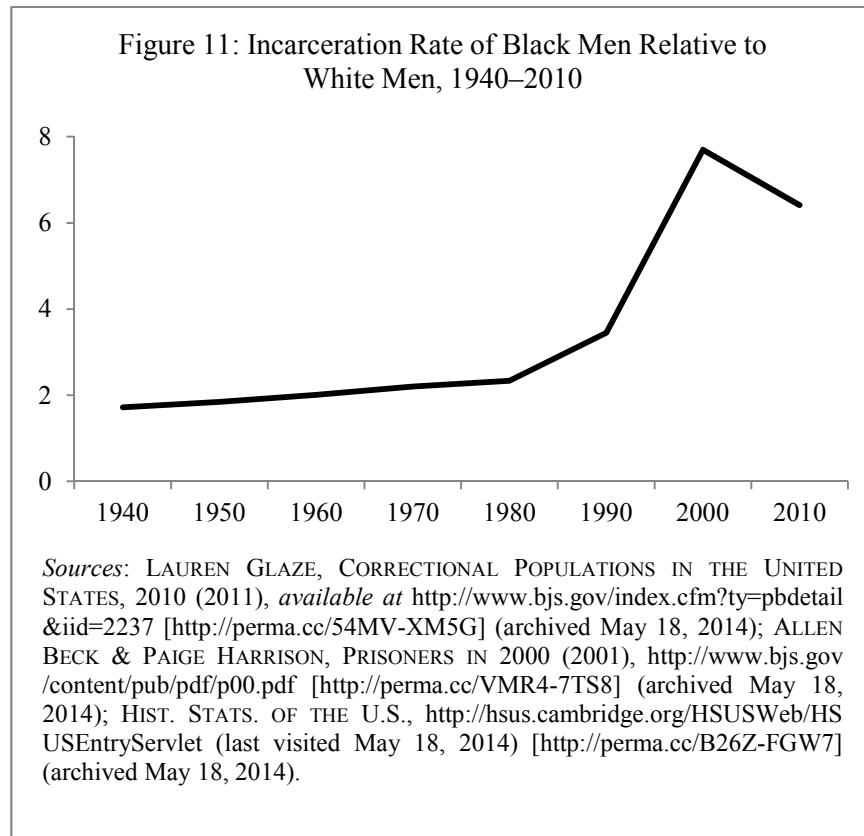
My data do not include men who are living in group quarters, which include jails and prisons. Yet black men are incarcerated at a much higher rate than white men, and that divergence has increased substantially, as Figure 11 depicts. Black men went to prison 3.4 times as often as white men in 1990; that number jumped to 7.7 in 2000, falling slightly to 6.4 in 2010. Explanations for this discrepancy vary, but the important point here is that the examination of labor force data cannot provide the full picture of

96. *Id.*

97. Bourne Wahl, *supra* note 5, at 15.



economic well-being when a substantial proportion of one race is ineligible for ordinary employment.<sup>98</sup>



98. The 1980s saw a tremendous increase in criminal activity among young black men. Richard B. Freeman, *Why Do So Many Young American Men Commit Crimes and What Might We Do About It?*, 10 J. ECON. PERSP. 25 (1996). Some might also point to racial profiling or the workings of drug laws to help explain the relatively high black incarceration rate. See, e.g., Samuel R. Gross & Katherine Y. Barnes, *Road Work: Racial Profiling and Drug Interdiction on the Highway*, 101 MICH. L. REV. 651 (2002); Richard Dvorak, *Cracking the Code: “De-Coding” Colorblind Shurs During the Congressional Crack Cocaine Debates*, 5 MICH. J. RACE & L. 611 (2000). A recent article in my hometown newspaper suggests that the labeling of a disproportionate number of black children as having behavioral or emotional disabilities leads to “dumping” them into disciplinary special-education classes that create a “school-to-prison pipeline.” Jeffrey Meitrodt, *In Minnesota, Race Drives School Labels, Discipline*, STAR TRIB. (Dec. 18, 2013, 11:30 AM), <http://www.startribune.com/local/minneapolis/235894231.html> [<http://perma.cc/BBR5-N9XU>] (archived Apr. 6, 2014).

#### D. Female-Headed Households

Examining only the experience of males ignores the major changes in family structure that have transpired since the passage of the CRA. Some scholars suggest that erosion in the economic well-being of black families has occurred partly because of the vast increase in female-headed households.<sup>99</sup> In 1970, 9% of white households with children under age 18 were headed by a single mother, whereas the proportion of black households was one-third. Today, the figures are one-fifth for whites and more than one-half for blacks.<sup>100</sup>

#### E. Residential Segregation

One reason that blacks today might earn less than comparable whites is because they live in different neighborhoods. Some scholars have found that segregation in housing has a negative effect on the earnings of blacks but little impact on those of whites, *ceteris paribus*.<sup>101</sup>

A potential explanation is spatial mismatch of housing and jobs for blacks.<sup>102</sup> Inability to afford a car or limited access to public

99. See, e.g., William Darity, Jr. & Samuel L. Myers, Jr., *Changes in Black Family Structure: Implications for Welfare Dependency*, 73 AM. ECON. REV. 59 (1983); William A. Darity, Jr., Samuel L. Myers, Jr. & Chanjin Chung, *Racial Earnings Disparities and Family Structure*, 65 S. ECON. J. 20 (1998).

100. U.S. CENSUS BUREAU, FAMILIES AND LIVING ARRANGEMENTS (2013), available at <http://www.census.gov/hhes/families/data/families.html> [<http://perma.cc/NQ9E-SQNJ>] (archived Apr. 6, 2014).

101. David M. Cutler & Edward L. Glaeser, *Are Ghettos Good or Bad?*, 112 Q. J. ECON. 827 (1997); Bourne Wahl, *supra* note 5; William J. Collins and Robert A. Margo, *Residential Segregation and Socioeconomic Outcomes: When Did Ghettos Go Bad?*, 69 ECON. LETTERS 239 (2000) (extending Cutler's and Glaeser's work backward). Although urban residential segregation had a strong adverse impact on labor-market and social outcomes of young African Americans relative to whites starting during the 1980s, Collins and Margo find little evidence of such an effect from 1940 to 1970. *Id.* As a side note, however, they find that blacks actually suffered more from the after-effects of the race riots of the 1960s, in part because many frightened employers moved out of the city. William J. Collins & Robert A. Margo, *The Labor Market Effects of the 1960s Riots*, 5 BROOKINGS-WHARTON PAPERS ON URB. AFF. 1 (2004).

102. John F. Kain, *Housing Segregation, Negro Employment, and Metropolitan Decentralization*, 82 Q. J. ECON. 175 (1968); David Ellwood, *The Spatial Mismatch Hypothesis: Are There Teenage Jobs Missing in the Ghetto?*, in THE BLACK YOUTH EMPLOYMENT CRISIS 147 (Richard B. Freeman & Harry J. Holzer eds., 1986); Christopher Jencks & Susan E. Mayer, *Residential Segregation, Job Proximity, and Black Job Opportunities*, in INNER-CITY POVERTY IN THE UNITED STATES 187 (Laurence E. Lynn, Jr., & Michael G.H. McGeary eds., 1990); Harry J. Holzer, *The Spatial Mismatch Hypothesis: What Has the Evidence Shown?*, 28 URB. STUD. 105 (1991); Keith R. Ihlanfeldt & David L. Sjoquist, *Job Accessibility and Racial Differences in Youth Employment Rates*, 80 AM. ECON. REV. 267 (1990); Stephen L. Ross, *Racial Differences in*

transportation can make things worse.<sup>103</sup> Adding to black isolation is the increasing re-segregation of schools.<sup>104</sup> Statistical discrimination in hiring could therefore result from a lack of contact between races.<sup>105</sup> This could give rise to a dearth of positive role models and networking possibilities in black neighborhoods, making labor-market success even more difficult to achieve.<sup>106</sup> Particularly

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*Residential and Job Mobility: Evidence Concerning the Spatial Mismatch Hypothesis*, 43 J. URB. ECON. 112 (1998); Bruce A. Weinburg, *Black Residential Centralization and the Spatial Mismatch Hypothesis*, 48 J. URB. ECON. 110 (2000); Michael A. Stoll, Harry J. Holzer & Keith R. Ihlanfeldt, *Within Cities and Suburbs: Racial Residential Concentration and the Spatial Distribution of Employment Opportunities Across Sub-Metropolitan Areas*, 19 J. POL'Y ANALYSIS & MGMT. 207 (2000); Michael Stoll, *Job Sprawl, Spatial Mismatch, and Black Employment Disadvantage* (UCLA Cali. Center for Population Res., Working Paper No. CCPR-014-05, 2005), available at <http://papers.ccpr.ucla.edu/papers/PWP-CCPR-2005-014/PWP-CCPR-2005-014.pdf> [<http://perma.cc/9L4N-HUPG>] (archived Apr. 6, 2014).

103. Edward L. Glaeser & Matthew E. Kahn, *Sprawl and Urban Growth* (Nat'l Bureau Econ. Res., Working Paper No. 9733, 2003), available at [www.nber.org/papers/w9733.pdf](http://www.nber.org/papers/w9733.pdf) [<http://perma.cc/W988-R8WC>] (archived Apr. 6, 2014) (suggesting that cities with more sprawl may imply lower well-being for poor people, particularly blacks, because they cannot afford cars); Brian D. Taylor & Paul M. Ong, *Spatial Mismatch or Automobile Mismatch? An Examination of Race, Residence, and Commuting in US Metropolitan Areas*, 32 URB. STUD. 1453 (1995) (suggesting same); Stoll et al., *supra* note 102, at 207 (noting that many low-skilled jobs in metro areas simply cannot be reached by public transportation); Steven Raphael & Michael A. Stoll, *Can Boosting Minority Car-Ownership Rates Narrow Inter-Racial Employment Gaps?*, 2 BROOKINGS-WHARTON PAPERS ON URB. AFF. 99 (2001) (noting same).

104. Sean F. Reardon, Elena Tej Grewal, Demetra Kalogrides & Erica Greenberg, *Brown Fades: The End of Court-Ordered School Desegregation and the Resegregation of American Public Schools*, 31 J. POL'Y ANALYSIS & MGMT. 876 (2012).

105. David Neumark, *Wage Differentials by Race and Sex: The Roles of Taste Discrimination and Labor Market Information*, 38 INDUS. REL. 414 (1999); Keith R. Ihlanfeldt & Benjamin Scafidi, *Black Self-Segregation as a Cause of Housing Segregation: Evidence from the Multi-City Study of Urban Inequality*, 51 J. URB. ECON. 366 (2002). Statistical discrimination refers to the practice of distinguishing among persons based on a perceived group characteristic rather than on individual characteristics, perhaps due to an inability to assess individual productivity cheaply for particular groups. Edmund S. Phelps, *The Statistical Theory of Racism and Sexism*, 62 AM. ECON. REV. 659 (1972); Dennis J. Aigner & Glen G. Cain, *Statistical Theories of Discrimination in Labor Markets*, 30 INDUS. & LAB. REL. REV. 175 (1977).

106. See Douglas Massey, Andrew Gross & Mitchell Eggers, *Segregation, The Concentration of Poverty, and The Life Chances of Individuals*, 20 SOC. SCI. RES. 397 (1991); DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993); WILSON, *supra* note 45; WILLIAM J. WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* (1996); George J. Borjas, *Ethnicity, Neighborhoods, and*

sobering is that even if no one is prejudiced, no one prefers associating with persons of their own race, everyone believes that people of different races have similar average productivity, and everyone is rational, there is still a possibility that differences in labor-market treatment will arise due to segregation in housing and schooling simply because people tend to hire those with familiar backgrounds.<sup>107</sup>

Residential segregation clearly is not the only reason for the racial wage gap. Of U.S. metropolitan areas with populations greater than one million in 2000, 20 of the top 25 most-segregated areas were in the North.<sup>108</sup> The most segregated cities in the nation were Gary, Detroit, Milwaukee, New York, and Chicago.<sup>109</sup> But this does not mean that the South provides a more equitable labor market for blacks, despite its relatively greater degree of residential integration.<sup>110</sup> Figures 5 and 6 show that the racial wage gap is still relatively larger in VRA states. At a municipal level, wages in Detroit and Milwaukee are actually much closer to racial parity than wages in Atlanta and Washington, D.C.<sup>111</sup> But earnings equity among the employed clearly is not all that matters—the former rank among the worst and the latter among the best cities for blacks to live, according to a recent survey by *Black Enterprise* magazine.<sup>112</sup>

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*Human-Capital Externalities*, 85 AM. ECON. REV. 365 (1995); Edward L. Glaeser, Bruce Sacerdote & Jose A. Scheinkman, *Crime and Social Interactions*, 111 Q. J. ECON. 507 (1996); Shelly Lundberg & Richard Startz, *On the Persistence of Racial Inequality*, 16 J. LAB. ECON. 292 (1998); Antoni Calvó-Armengol & Matthew O. Jackson, *The Effects of Social Networks on Employment and Inequality*, 94 AM. ECON. REV. 426 (2004).

107. Bradford Cornell & Ivo Welch, *Culture, Information, and Screening Discrimination*, 104 J. POLI. ECON. 542 (1996) (developing a simple yet powerful model that yields this possibility).

108. *Segregation: Dissimilarity Indices*, CENSUSSCOPE, [http://www.census.gov/scope/us/rank\\_dissimilarity\\_white\\_black.html](http://www.census.gov/scope/us/rank_dissimilarity_white_black.html) (last visited Feb. 21, 2014) [<http://perma.cc/L4H5-AB2D>] (archived Apr. 6, 2014). The five non-northern cities were St. Louis, Miami, New Orleans, Memphis, and Houston. *Id.*

109. *Id.*

110. Gavin Wright also points out that regional aggregates can be misleading because development in the New South has been concentrated in a few “hot” metropolitan areas. Wright, *supra* note 19, at 283.

111. Bourne Wahl, *supra* note 5. Atlanta is 28th and Washington, D.C. is 34th in the rankings for residential segregation in large cities. *Id.*

112. Carolyn M. Brown, *Top 10 Cities for African Americans 2007*, BLACK ENTERPRISE (May 1, 2007), <http://www.blackenterprise.com/magazine/2007/05/01/top-10-cities-for-african-americans-2007> [<http://perma.cc/Q97A-5QSN>] (archived Apr. 6, 2014). The magazine also listed Cleveland, Detroit, and Milwaukee among the worst places for blacks to live. *Id.*

*F. Evidence of Persistent Labor-Market Discrimination*

The numbers suggest that some measures of well-being show improvements in the economic position of blacks in this country whereas others do not. This raises the important question: Has Title VII of the CRA (as amended) eliminated discrimination in the labor market? William Wiecek and Judy Hamilton, writing for this symposium, conclude that the answer is no.<sup>113</sup> Paired-audit studies—in which comparable blacks and whites applied for the same job—imply that racial differences in hiring persist.<sup>114</sup> Other research indicates that blacks and whites do not receive similar amounts of on-the-job training.<sup>115</sup>

*G. Life Expectancy, Infant Mortality, Public Accommodations, Happiness, and Perceptions of Equitable Treatment*

Certainly, labor market treatment and outcomes are not the only measures of well-being. This Article discusses four other areas in which whites and blacks encounter differences—life expectancy, infant mortality rates, access to hotels and restaurants, and happiness—and briefly describes how these differences have changed over time.

Both whites and blacks have enjoyed an increase in life expectancy since 1940, and the racial gap has narrowed. The difference between life expectancy at birth for whites and blacks was 11 years in 1940, 7.5 years in 1960, 6 years in 1980, and 4.5 years in 2008.<sup>116</sup>

Black–white infant mortality rates started to converge shortly after the passage of the CRA. But the trend reversed during the 1980s and 1990s: The black rate was 2.15 times the size of the white

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113. Wiecek & Hamilton, *supra* note 78.

114. MARGERY AUSTIN TURNER, MICHAEL FIX & RAYMOND J. STRUYK, OPPORTUNITIES DENIED, OPPORTUNITIES DIMINISHED: RACIAL DISCRIMINATION IN HIRING (1991); Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, 94 AM. ECON. REV. 991 (2004); Wiecek & Hamilton, *supra* note 78 (offering other compelling examples of what they term “structural racism” in the workplace).

115. Edwin A. Sexton & Reed Neil Olsen, *The Returns to On-the-Job Training: Are They the Same for Blacks and Whites?*, 61 S. ECON. J. 328 (1994).

116. Elizabeth Arias, *United States Life Tables, 2008*, 61 NAT'L VITAL STAT. REP. 1, 53–54 (2012), [http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61\\_03.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_03.pdf) [<http://perma.cc/QSM5-29JJ>] (archived Apr. 6, 2014).

rate in 1979 but 2.52 times its size in 1999.<sup>117</sup> Since then, the ratio has fallen to a still substantial 2.38 in 2009.<sup>118</sup>

One area of unquestioned progress is in the removal of racial obstacles in public accommodations. The inability to find lodging and meals made moving about difficult and dangerous for blacks in the first half of the 20th century. Gavin Wright suggested that one large benefit of the CRA was its effect in eradicating discrimination in public accommodations for eating and sleeping, which were among the most sensitive issues associated with the color line.<sup>119</sup> As late as 1964, he reported that three of Chapel Hill's five motels did not accept blacks and one-third of local restaurants had some discriminatory policy.<sup>120</sup> Those days seem largely gone.

Happiness is perhaps the most direct measure of well-being but also the most elusive to estimate. In an innovative study, Betsey Stevenson and Justin Wolfers combed through several years of data from the General Social Survey in an attempt to assess whether blacks have become happier relative to whites.<sup>121</sup> They concluded that the answer is yes.<sup>122</sup> But they also suggested that part of the closure in the happiness gap has come about due to an increase in unhappiness among whites, particularly white women.<sup>123</sup>

Other data from the General Social Survey show that blacks and whites continue to hold very different perceptions. When asked in 2010 whether blacks on average have worse jobs, income, and housing because of discrimination, whites replied "yes" 31% of the

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117. Kenneth Y. Chay & Michael Greenstone, *The Convergence in Black-White Infant Mortality Rates During the 1960's*, 90 AM. ECON. REV. 326 (2000); NAT'L VITAL STAT. SYS., DEATH RATES FOR 72 SELECTED CAUSES, BY 10-YEAR AGE GROUPS, RACE, AND SEX: UNITED STATES, 1979-1998 (2000), <http://www.cdc.gov/nchs/data/statab/gm290-98.pdf> [<http://perma.cc/HA6F-N3SF>] (archived Apr. 6, 2014) [hereinafter DEATH RATES]; NAT'L VITAL STAT. SYS. INFANT, NEONATAL, AND POSTNEONATAL DEATHS, PERCENT OF TOTAL DEATHS, AND MORTALITY RATES FOR THE 15 LEADING CAUSES OF INFANT DEATH BY RACE AND SEX: UNITED STATES, 2009 (2012), [http://www.cdc.gov/nchs/data/dvs/LCW\\_K7\\_2009.pdf](http://www.cdc.gov/nchs/data/dvs/LCW_K7_2009.pdf) [<http://perma.cc/JJL9-F4WD>] (archived Apr. 6, 2014) [hereinafter INFANT DEATH RATES].

118. Chay & Greenstone, *supra* note 117; DEATH RATES, *supra* note 117; INFANT DEATH RATES, *supra* note 117.

119. Wright, *supra* note 19, at 272-73.

120. *Id.* See also William A. Sundstrom, *The Color Line: Racial Norms and Discrimination in Urban Labor Markets, 1910-1950*, 54 J. ECON. HIST. 382 (1994). Unequal treatment took place outside the South as well, of course: My father had a boyhood friend who came from the only black family in Spencer, Indiana, in the 1930s and 1940s; the friend had to travel several miles to find a barber willing to cut his hair.

121. Betsey Stevenson & Justin Wolfers, *Subjective and Objective Indicators of Racial Progress*, 41 J. LEG. STUD. 459 (2012).

122. *Id.*

123. *Id.*

time while blacks said “yes” 62% of the time.<sup>124</sup> Both of these numbers have declined since 1985 (from 42% and 78%, respectively), but the gap is still quite large.<sup>125</sup> When asked to rank on a scale of 1 (very committed) to 7 (lacking in commitment) whether whites have a commitment to fair and equal treatment of all groups in society, 22% of whites answered 5, 6, or 7, but 42% of blacks chose these three categories.<sup>126</sup> When asked whether the government was spending the right amount of money to ensure equal treatment of different groups, 27% of whites said the expenditure was too small but 24% thought it was too large.<sup>127</sup> Among blacks, the answers were 80% and 2%, respectively.<sup>128</sup>

#### CONCLUSION

The civil rights legislation passed half a century ago made a significant and immediate difference in the economic well-being of black Americans. As scholars John Donohue and James Heckman put it, what happened in the latter half of the 1960s was not just a continuation of the progress blacks had seen for the previous 25 years but rather a real upward shift.<sup>129</sup> My investigation of micro-level census data confirms this, particularly for blacks living in the states covered by the Voting Rights Act of 1965.<sup>130</sup> The shift was permanent: Not only did black males in VRA states see a significant and sustained rise in their earnings relative to blacks of comparable age and educational attainment who lived elsewhere, but the wages of black men relative to similarly educated white men also increased substantially, particularly in states covered by the VRA.<sup>131</sup>

But the economic well-being of black Americans still lags behind that of whites; on average, blacks consider this a larger problem than whites and are more likely to attribute it to discrimination.<sup>132</sup> Black males with educational backgrounds similar

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124. *General Social Survey: Cumulative Data File 1972–2010*, SDA, <http://sda.berkeley.edu/cgi-bin/hsda?harcda+gss12> (last visited Feb. 21, 2014) [<http://perma.cc/3V9M-U8P7>] (archived Apr. 6, 2014).

125. *Id.*

126. *Id.*

127. *Id.*

128. A more recent study conducted by the Center for American Progress is optimistic about the support for racial parity. *ALL-IN NATION: AN AMERICA THAT WORKS FOR ALL* (Vanessa Cárdenas & Sarah Treuhaupt eds., 2013), available at <http://www.americanprogress.org/wp-content/uploads/2013/07/AllInNation.pdf> [<http://perma.cc/UF8L-JRG9>] (archived Apr. 6, 2014).

129. Donohue & Heckman, *supra* note 7.

130. *See supra* Part II.

131. *See supra* Part II.

132. *See supra* Part II, III.G.

to those of white males have seen a closing of the wage gap, but a gap nevertheless remains.<sup>133</sup> Blacks continue to have relatively higher unemployment and labor-market dropout rates.<sup>134</sup> What is more, blacks on average enter the labor market with lower levels of schooling and do not receive as much occupational training.<sup>135</sup> Persistent residential segregation and increasingly re-segregated schools are part of the U.S. landscape.<sup>136</sup> These features potentially create a spatial mismatch of housing and jobs that disproportionately affect blacks. They also generate a world in which blacks and whites are even more isolated from one another. Other factors contributing to the continuing discrepancies between races are much lower relative wealth<sup>137</sup> (meaning less of a cushion in tough times), a relatively larger incarceration rate,<sup>138</sup> and a relatively higher proportion of female-headed households among blacks.<sup>139</sup>

The Civil Rights Act of 1964 was a stone of hope for black Americans. Its Title VII furnished a bedrock foundation for abrupt improvement in labor-market outcomes, particularly relative earnings of black men in states covered by the Voting Rights Act passed one year later. But the monumental task it set out to achieve is not done. President Lyndon Johnson put it well in his special message to Congress imploring it to pass the VRA:

[R]arely in any time does an issue lay bare the secret heart of America itself. Rarely are we met with a challenge, not to our growth or abundance, our welfare or our security, but rather to the values and the purposes and the meaning of our beloved Nation. The issue of equal rights for American Negroes is such an issue. And should we defeat every enemy, should we double our wealth and conquer the stars, and still be unequal to this issue, then we will have failed as a people and as a nation.<sup>140</sup>

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133. *See supra* Part II.

134. *See supra* Part III.A, B.

135. *See supra* Part II.D.

136. *See supra* Part III.E.

137. DREW DESILVER, PEW RESEARCH CTR., BLACK INCOMES ARE UP, BUT WEALTH ISN'T (2013), *available at* <http://www.pewresearch.org/fact-tank/2013/08/30/black-incomes-are-up-but-wealth-isnt> [<http://perma.cc/4SWE-ELP5>] (archived Apr. 6, 2014).

138. *See supra* Part III.C.

139. *See supra* Part III.D.

140. President Lyndon B. Johnson, Special Message to the Congress: The American Promise (Mar. 15, 1965), *available at* <http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/650315.asp> [<http://perma.cc/3DJ7-5NNH>] (archived Apr. 6, 2014).