COLUMBIA LAW REVIEW FORUM

VOL. 120 DECEMBER 2, 2020 PAGES 299–320

BORROWING EQUALITY: DISPOSSESSION AND THE NEED FOR AN ABOLITIONIST APPROACH TO SURVIVAL DEBT

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In Borrowing Equality*, Professor Atkinson deftly demonstrates Congress's nonsensical bifurcation of the twin concepts of "credit" and "debt," whereby it celebrates and encourages the former and regulates and punishes the latter. She then shows that, in refusing to acknowledge the harmful consequences of indebtedness while legislating credit-based solutions to inequality, these credit policies in fact entrench the very hierarchies and systems of marginalization they are purportedly designed to alleviate. In this Piece, I first consider some implications of Professor Atkinson's insight; namely, (1) as Jackie Wang argues, that these credit policies are in fact designed to dispossess Black and Brown borrowers; (2) and that the rhetorical trap Professor Atkinson identifies (celebration of credit and demonization of debt) has thus far obscured this phenomenon and has tricked progressives into using their energy and resources to defend the virtue of and rescue debtors rather than to directly challenge the use of debt as a mechanism of dispossession. Using Professor Atkinson's previous work as a springboard, I then suggest an alternative framework for evaluating credit policies. Specifically, I suggest an abolitionist approach to what I call survival debt (debt necessary for the debtor to meet basic needs) and a regulatory approach to what I call opportunity debt (debt that genuinely creates opportunity for the debtor to build wealth).*

INTRODUCTION

Professor Atkinson's article is an essential piece for this moment, as we stand at the brink of an economic and social disaster and as calls for racial justice reverberate. Over 200,000 Americans have been killed by COVID-19, but Black, Latinx, and other marginalized communities have suffered the most.[1] Black and Latinx people account for nearly two-thirds

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1. Aria Bendix, Black and Brown People Make Up Two-Thirds of US Coronavirus Deaths Below Age 65, a New Study Found, Bus. Insider (July 11, 2020), https://www.businessinsider.com/black-hispanic-people-coronavirus-deaths-under-65-cdc-report-2020-7 [https://perma.cc/T8TK-GSU2]; Covid in the U.S.: Latest Map and Case Count, N.Y. Times,

of coronavirus deaths among those younger than sixty-five.[2] Black and other marginalized Americans are forced to "decide between economic security and health security" with many working in what are considered "essential jobs" that involve working "in the food industry, working in health services, [and] driving taxis."[3] In addition, service industry jobs—in which workers are disproportionately Black and Brown—have been disproportionately extinguished as a result of the pandemic.[4] How will we address and redress these economic and social crises? Anyone seeking an answer to that question must read Professor Atkinson's *Borrowing Equality*, which stands at the intersection of historic racial discrimination, dispossession, and economic hardship, and is an urgent call for change—to finally turn away from borrowing as a solution to systemic inequality and injustice.

Professor Atkinson deftly identifies and critiques the political practice of "treating borrowing money as a social good and owing money as a personal failure."[5] She compares Congress's "relatively optimistic and expansive posture in the treatment of credit . . . to its relatively negative and restrictive treatment of debt."[6] We have all become so accustomed to this rhetoric that it feels normal, despite being truly bizarre and leading to unjust and racist economic policies. This rhetorical trick—treating credit as a social good and ignoring the harmful consequences of debt (including acting as if overindebted borrowers are just outliers and bad decisionmakers)—obscures the way in which this debt regime entrenches inequality. Here, Atkinson pulls back the curtain, clearly demonstrating the ways in which our over-reliance on borrowing entrenches inequality.

In the current system, and thanks to this bait-and-switch, creditors are praised while debtors are punished: Any time debtors face challenges, debtors are blamed, and the system of responding to struggling debtors is

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https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html (on file with the *Columbia Law Review*) (last visited Oct. 22, 2020).

2. Bendix, supra note 1; see also Jeff Adelson, Youssef Rddad & Faimon Roberts, 'It's Disturbing': Coronavirus Kills Black Residents at Dramatic Rates Across Louisiana, New Orleans Advoc. (Apr. 21, 2020), https://www.nola.com/news/coronavirus/article_107fec9c-8408-11ea-9d9b-df1bbbef7d77.html (on file with the *Columbia Law Review*) ("Nearly 57% of the 1,405 people who have lost their lives to the coronavirus in Louisiana are black, while African-Americans make up only 33% of the state's population.").

3. Stacey Vanek Smith & Greg Rosalsky, Black Americans Bear the Brunt of the COVID-19 Pandemic's Economic Impact, NPR (June 3, 2020), https://www.npr.org/2020/06/03/868469779/black-americans-bear-the-brunt-of-the-covid-19-pandemics-economic-impact [https://perma.cc/9N5M-4AS5].

4. Eli Rosenberg, An Undercurrent of the Protests: African Americans Are Struggling More Economically from this Pandemic, Wash. Post (June 1, 2020), https://www.washingtonpost.com/business/2020/06/01/coronavirus-impact-black-communities-protests (on file with the *Columbia Law Review*).

5. Abbye Atkinson, Borrowing Equality, 120 Colum. L. Rev. 1403, 1409 (2020) [hereinafter Atkinson, Borrowing Equality].

6. Id. at 1407.

largely punitive.[7] A debtor's struggle to repay is met with anything from disdain to criminalization.[8] Despite crafting a system that requires marginalized borrowers to take on inordinate amounts of debt to fund housing, education, and even basic needs, Congress shows "a deep suspicion of borrowers who f[ind] themselves unable to pay their financial obligations" and makes it difficult for borrowers to escape the very situations of over-indebtedness that are the predictable consequences of outsourcing equality work to creditors.[9] Crucially, as Atkinson explains, "because debt affects marginalized groups disproportionately and more severely, its invocation as a source of equality and mobility may simply further entrench the very inequality it is offered to ameliorate."[10] Far from being helpful or even innocuous, debt too often works as "an institution of social subordination that actively engages in hierarchy making and reproduction."[11]

In this response, I consider the economic, political, and moral implications of this bait-and-switch. I then explore solutions. Although Professor Atkinson does not profess to have a "ready solution" to this problem, if we consider her article *Rethinking Credit as Social Provision* alongside *Borrowing Equality*, the solution, or at least the path to the solution, is clear: We should pursue an abolitionist approach to what I call survival debt, that is, debt that individuals incur in order to survive and live a life of human dignity. I further propose an abolitionist approach to survival debt and a reformist approach to what I call opportunity debt—debt that enables an individual to acquire wealth, such as procuring or expanding a home or business. I also suggest that some debt that might at first glance seem to be opportunity debt—such as educational debt and in some cases housing debt—may in fact be more aptly characterized as survival debt.

I. The Economic, Political, and Moral Implications of Borrowing Equality

What do we learn from Atkinson about the role of borrowing as it relates to equality? We learn that it not only fails to achieve equality but it also in fact entrenches inequality—and we learn that this entrenchment of inequality is entirely predictable. In fact, if we review her evidence, we may even conclude that this system—and the rhetoric that obscures its insidi-

7. See id. at 1438 ("Over time, the Bankruptcy Code has become harsher and more punitive in its treatment of debt and debtors.").

8. See id. at 1456–57. According to 2014 data from the Federal Reserve, the median white household possessed $141,900 in wealth in 2013—thirteen times greater than the median Black household ($11,000) and ten times greater than the median Latinx household ($13,700). Jesse Bricker, Lisa J. Dettling, Alice Henriques, Joanne W. Hsu, Kevin B. Moore, John Sabelhaus, Jeffrey Thompson & Richard A. Windle, Changes in U.S. Family Finances from 2010 to 2013: Evidence from the Survey of Consumer Finances, Fed. Rsrv. Bull., Sept. 2014, at 1, 9, 12.

9. Atkinson, Borrowing Equality, supra note 5, at 1434.

10. Id. at 1410.

11. Id. at 1412.

ousness—is in fact *designed* to dispossess Black and other marginalized borrowers and enrich creditors.

Atkinson carefully catalogues the ways in which extension of credit to Black and Latinx borrowers, as well as to women of all races (particularly Black and Latinx women), does not inure to their benefit. In fact, it often causes harm. She provides ample evidence that women and Black Americans "remain among the most vulnerable when it comes to debt and have not realized meaningful relative advances in certain metrics of equality like income."[12] This fact is also true when it comes to wealth.[13]

Much of the crucial work Atkinson does in this article is historical, demonstrating that when credit-fueled mass consumption "became synonymous with the 'American way of life,'" Black borrowers were systematically excluded, as were women.[14] Atkinson further shows that, precisely because we were sold this tale that credit was synonymous with opportunity, both women's rights advocates and racial justice advocates historically focused on achieving access to credit (although efforts to increase credit for women were mostly by and for white women).[15] She discusses the ways in which the Equal Credit Opportunity Act, the Community Reinvestment Act, and the Higher Education Act all focus on credit as social good and are set forth as mechanisms for achieving equality. In detailing this history, Atkinson shows how Congress in fact outsourced equality work to creditors, private actors who "prioritiz[e] shareholder value and profit margins over communitarian interests in meaningful social change."[16]

To illustrate the ways in which debt reproduces and exacerbates race and gender hierarchies, Atkinson focuses on two types of borrowing, student loans and housing, showing that neither has succeeded in bringing about equality but rather that both have entrenched inequality.

In reviewing the student loan context, Atkinson highlights findings from a recent report by the American Association of University Women (AAUW), showing that women owe two-thirds of total outstanding student loans and "are more likely than men to default on these loans."[17] In addition, Black and Latinx borrowers are also more likely than white borrowers to default on their student loans.[18] Thirty-four percent of women in repayment indicated that they are "unable to meet essential expenses," and fifty-

12. Id.

13. See id. at 1442, 1445–46 ("In the worst of times, the stunted and racialized values of their homes and their communities only worked to exacerbate the racial divide in wealth, further perpetuating inequality.").

14. Id. at 1415–16.

15. Id. at 1427–30 (describing this focus in the context of women's aspirations and directly tackling Congress's implicit understanding of debt as an inextricable part of credit).

16. Id. at 1413.

17. Id. at 1441 (citing Am. Ass'n of Univ. Women, Deeper in Debt: Women and Student Loans in the Time of COVID 1 (2020), https://www.aauw.org/app/uploads/2020/05/Deeper_In_Debt_FINAL.pdf [https://perma.cc/FM4G-C4SB]).

18. Id.

seven percent of Black women said that they cannot meet their essential expenses.[19]

As Atkinson points out, the problem of this unequal student debt burden is exacerbated by structural inequality that depresses both the income and wealth of Black and Latinx women and men, as well as those of white women.[20] White households with college graduates are at least *three times* as wealthy as Black households with the same degree attainment.[21] In fact, the average Black household with a college-educated head of household has *less* wealth than the average white household whose head of household did not graduate from high school.[22] In contrast to white borrowers, Black borrowers with a college degree are just as likely to file for bankruptcy as Black borrowers without a college degree.[23]

Housing debt also has in many cases been more harmful than helpful to marginalized borrowers, with Black borrowers suffering tremendously from exclusion and predation. Atkinson discusses how the Fair Housing Act refused to make loans available to Black borrowers, so Black borrowers could only access loans with exorbitant interest rates.[24] As the white middle class began to thrive, Black communities were left behind.[25] Predatory and discriminatory lending practices persist, and meanwhile, Black individuals

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19. Id. (internal quotation mark omitted) (quoting Am. Ass'n of Univ. Women, Deeper in Debt: Women and Student Loans 2 (2017), https://www.aauw.org/app/uploads/2020/03/DeeperinDebt-nsa.pdf [https://perma.cc/3WQV-3JVV]).

20. See id.

21. See William Darity Jr., Darrick Hamilton, Mark Paul, Alan Aja, Anne Price, Antonio Moore & Caterina Chiopris, Samuel DuBois Cook Ctr. on Soc. Equity & Insight Ctr. for Cmty. Econ. Dev., What We Get Wrong About Closing the Racial Wealth Gap 6 (2018), https://socialequity.duke.edu/wp-content/uploads/2020/01/what-we-get-wrong.pdf [https://perma.cc/W37Q-3GDB] ("White households with a bachelor's degree or post-graduate education (such as with a Ph.D., MD, and JD) are more than three times as wealthy as black households with the same degree attainment."); see also Laura Sullivan, Tatjana Meschede, Lars Dietrich, Thomas Shapiro, Amy Traub, Catherine Ruetschlin & Tamara Draut, Inst. on Assets & Soc. Pol'y, Brandeis Univ. & Demos, The Racial Wealth Gap: Why Policy Matters 2 (2015), https://www.demos.org/sites/default/files/publications/RacialWealthGap_1.pdf [https://perma.cc/WQ2C-WWKL] ("For every $1 in wealth that accrues to median Black households associated with a college degree, median white households accrue $11.49."); Amy Traub, Laura Sullivan, Tatjana Meschede & Tom Shapiro, Demos & Inst. on Assets & Soc. Pol'y, Brandeis Univ., The Asset Value of Whiteness: Understanding the Racial Wealth Gap 4, https://www.demos.org/sites/default/files/publications/Asset%20Value%20of%20Whiteness_0.pdf [https://perma.cc/V8NZ-W69L] ("The median white adult who attended college has 7.2 times more wealth than the median black adult who attended college and 3.9 times more wealth than the median Latino adult who attended college.").

22. Darity et al., supra note 21, at 6; see also Hearing on Oversight of Bankruptcy Law and Legislative Proposals Before the Subcomm. on Antitrust, Com. & Admin. L. of the H. Comm. on the Judiciary, 116th Cong. 6 (2019) (written statement of Dalié Jiménez, Professor of Law, University of California, Irvine School of Law).

23. Abbye Atkinson, Race, Educational Loans & Bankruptcy, 16 Mich. J. Race & L. 1, 11 (2010).

24. Atkinson, Borrowing Equality, supra note 5, at 1418.

25. Id. at 1418–19.

and families could "never realize the same wealth enhancement from buying a house because the fact that they are African American means that the collateral is perceived to be worth less relative to the same home owned by a white person, just as dictated by the FHA in 1936."[26]

Atkinson's focus on home loans and student loans makes sense, because these are the two areas in which Congress's professed focus on credit as a tool for equality is clearest,[27] but it is important to also highlight the various other types of indebtedness, some of which are even more concerning.[28]

In addition to student loan debt and housing debt, I want to highlight another odious type of debt on which Atkinson focuses in her earlier paper, *Rethinking Credit as Social Provision*: debt that is incurred as a means for survival.[29] There, Atkinson discusses the way in which credit has been used as a substitute for social welfare provision and argues that "[c]redit is fundamentally incompatible with the entrenched intergenerational poverty that plagues low-income Americans."[30] Low-income individuals and families can often only resolve a sudden expense or emergency (medical emergency, job loss, car repair, etc.) by turning to credit in order to survive. But when income is already insufficient or hardly sufficient to meet basic needs, having to repay the debt—even if the terms of the loans are decent—means that the individual will not be able to emerge from indebtedness.[31] Even before the coronavirus pandemic, many families did not have money to cover an emergency expense.[32]

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26. Id. at 1453–54.

27. See id. at 1425–39.

28. See, e.g., id. at 1457 ("[T]he failure to repay outstanding penal debt justifies exclusion from voting, restriction of other basic constitutional protections, and more.").

29. See generally Abbye Atkinson, Rethinking Credit as Social Provision, 71 Stan. L. Rev. 1093 (2019) [hereinafter Atkinson, Rethinking Credit] (arguing that credit will likely not result in an overall improvement in welfare for low-income Americans due to high interest rates and entrenched intergenerational poverty).

30. Id. at 1099.

31. See id. ("[L]ow-income borrowers . . . repay[ing] their debts without hardship . . . is an unduly optimistic expectation given both the high interest rates that low-income borrowers tend to pay and the fact that decades of data suggest that low-income Americans can consistently expect to be in worse economic shape as time passes."); Chrystin Ondersma, Small Debts, Big Burdens, 103 Minn. L. Rev. 2211, 2222 (2019) [hereinafter Ondersma, Small Debts]; see also ACLU, A Pound of Flesh: The Criminalization of Private Debt 9 (2018), https://www.aclu.org/sites/default/files/field_document/022318-debtreport_0.pdf [https://perma.cc/6XA4-W4PD] ("Many Americans spiral into indebtedness because they are living in a state of financial peril and are pushed over the edge by a traumatic event like the loss of a job, serious illness, or divorce, exacerbated by snowballing interest rates and fees."); Sara Sternberg Greene, The Bootstrap Trap, 67 Duke L.J. 233, 264 (2017) (discussing a study of seventy-one low-income individuals in North Carolina that examined the relationship between financial insecurity and credit for parents).

32. See ACLU, supra note 31, at 9–10 (citing Pew Charitable Trs., What Resources Do Families Have for Financial Emergencies? 1, 4 (2015), https://www.pewtrusts.org/-/media/assets/2015/11/emergencysavingsreportnov2015.pdf [https://perma.cc/RDB9-MUPF])

Atkinson also mentions municipal and penal debt, although she does not focus her paper here. But the links between racial injustice, indebtedness, and dispossession are startlingly clear in the penal context. Not only can incarceration result in a mountain of indebtedness from which escape is impossible, as Atkinson acknowledges, but indebtedness can also result in incarceration. Every year tens of thousands of arrest warrants are issued that stem from a failure to pay a private debt, and millions are threatened with arrest.[33] Creditors may sue for unpaid debt, and they disproportionately sue Black and Latinx borrowers.[34] The majority of these lawsuits result in default judgments.[35] Default judgments can occur for a variety of reasons: for example, because the borrower did not receive or understand the court notice, or because the borrower was unable to find affordable legal representation.[36] After a default judgment is issued, individuals may be summoned to appear in court to discuss payment or to fill out paperwork giving information about their financial assets.[37] Individuals unable to attend the initial court hearing are unlikely to be able to appear and respond to the summons; many may not receive the paperwork or may not know how to fill it out.[38] Nevertheless, in forty-four states, individuals who fail to respond may be arrested, even if they cannot afford to pay the debt.[39]

When you look at the full picture of credit and debt in this country, it is wildly disconcerting. It is not just that individuals must borrow to have a home and an education but they increasingly must borrow to meet their basic needs. On top of this, many individuals—vastly disproportionately Black and other marginalized individuals—are dispossessed via municipal and penal fines or entered into the penal system by virtue of indebtedness.

I now link Atkinson's paper to Jackie Wang's *Carceral Capitalism*.[40] Although Atkinson does explicitly assert that the way in which debt further

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("Research by the Pew Charitable Trusts found that one in three American families had no savings at all, and that 41 percent of households did not have $2,000 to cover an emergency expense.").

33. Id. at 4.

34. Margaret Mattes & Persis Yu, Nat'l Consumer L. Ctr., Inequitable Judgments: Examining Race and Federal Student Loan Collection Lawsuits 1 (2019), https://www.nclc.org/images/pdf/student_loans/report-inequitable-judgments-april2019.pdf [https://perma.cc/J2VH-VKJ7].

35. Id.

36. Id. at 8.

37. ACLU, supra note 31, at 5.

38. Mattes & Yu, supra note 34, at 8; see also ACLU, supra note 31, at 47 (describing one borrower who was unaware that she was sued and was later arrested for not appearing at the post-judgment proceeding because the first notice of appearance was delivered to the wrong address).

39. See ACLU, supra note 31, at 6–7 ("The people who are jailed or threatened with jail often are the most vulnerable Americans, living paycheck to paycheck, one emergency away from financial catastrophe . . . . They include[] retirees or people with disabilities who are unable to work.").

40. Jackie Wang, Carceral Capitalism (2018).

entrenches racial and gender hierarchies is intentional, she provides plenty of evidence that this is a plausible take. At the close of her paper, Atkinson notes that borrowing as a tool for social equality is a "predictable failure."[41] What Congress is doing, she says, is "encouraging the most vulnerable groups to invest in their own mobility and to fend for themselves in an imperfect capitalist society plagued by discrimination, raced and gendered hierarchy, and other socioeconomic pathologies that essentially limit the expected return on that investment."[42] Atkinson notes that creditors are obviously going to fail as vehicles for equality; they aren't meant to do equality work but rather exist to maximize their own returns.[43] They will charge the highest interest they can get away with charging, and those discriminatory and predatory lending practices make marginalized communities more precarious—and thus riskier to lend to—and, in turn, justify higher interest rates.[44] Of course this system fails to achieve equality; it is obvious that this would fail—and, to take it a step farther, it is difficult to escape the conclusion that it is *designed* to fail.

I imagine that Jackie Wang would agree with me that this rhetorical divide Atkinson uncovers, as well as the policy implications that follow, is far from accidental. Instead, she would say (I suspect) that this is further evidence of the way in which debt is used as an intentional mechanism of dispossession from and destruction of Black and other marginalized communities. Wang writes of the way in which debt functions as a "mechanism of dispossession."[45] That is, Black and other marginalized people are incorporated into our economic system as borrowers *precisely in order to be dispossessed*.[46] Our economic system, Wang suggests, works a racialized "accumulation by dispossession,"[47] in that the accumulation of private profits is increasingly accomplished by dispossessing individuals of their assets and income by means of debt. Keeping large swaths of society over-indebted is a tremendous profit tool for those who already have the most profits, and much of their profits are attributable to anything from information asymmetry to downright swindling.[48]

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41. Atkinson, Borrowing Equality, supra note 5, at 1468.

42. Id. at 1413.

43. See id. at 1425 ("The civil and political unrest . . . spark[ed] a new urgency to develop a federal response to the problem of apparently increasing inequality-fueled civil instability. Borrowing as equality . . . reveal[ed] Congress's interest in touting . . . increased access to loans, without considering expressly both economic and noneconomic debt-related risk.").

44. Id. at 1466–67.

45. Wang, supra note 40, at 113.

46. See id. at 112–13, 124–25, 134, 150 ("The debt economy's moral edifice will hold so long as the population is fractured into deserving and undeserving borrowers, and the most predatory credit instruments are reserved for the most vulnerable segments of the population.").

47. Id. at 113 (quoting David Harvey, The New Imperialism 137 (2003)).

48. See id. at 128–30, 133–36.

Part of the crucial work of Atkinson's paper is to show us that, throughout history, "the logic of debt justified and reproduced racial segregation that marked prevailing conceptions of social hierarchy."[49] She further shows us that "debt is itself central to the production and reproduction of social hierarchy that borrowing as equality is deployed to address."[50] Her work provides evidence that this system has the predictable effect of dispossessing and destroying the marginalized, while enriching those who already have disproportionate power and resources.

Examining the full picture, from discriminatory and predatory lending, to housing discrimination, employment discrimination, and overpolicing, it seems clear that the American dream was never intended to be extended to Black and other marginalized communities. It is also crucial to recall that when Black communities did manage to thrive, they were often immediately under threat. Again and again, throughout American history, thriving Black communities have been targets of dispossession, extraction, and destruction at the hands of whites.[51]

Atkinson herself traces the current role of debt back to its roots in slavery and in doing so, like Wang, traces the exploitation of Black Americans as consumer–borrowers to the historical exploitation of Black Americans as labor-producers.[52] Throughout history, debt has played a crucial role in this extraction and dispossession. Atkinson writes:

> This work of debt is unsurprising. Debt has long been explicitly used as a tool of literal and justified subordination. For example, the logic of debt has driven and continues to drive the negative impact of economic sanctions on marginalized communities.
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> Since at least the Reconstruction Era, debt has frustrated countervailing interests in proportionality of punishment and has also provided a legal justification for the continued subordination of African American men. In the Reconstruction Era, debt obligations, as then satisfied though the practice of convict leasing, "reproduced many of the immediate practical realities of slavery—a vast underclass of laborers, held to their jobs by force of law and threat of imprisonment, with few if any opportunities for escape."[53]

Debt, Atkinson explains, has "provided the rationale and legal basis for the subjugation of marginalized communities" and, "in part, the legal basis to keep people under control against their will."[54] As both Atkinson and Wang, among others, highlight, this indebtedness is often linked not

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49. Atkinson, Borrowing Equality, supra note 5, at 1454.

50. Id. at 1452.

51. See Carol Anderson, White Rage: The Unspoken Truth of Our Racial Divide 3–5 (2016).

52. See Wang, supra note 40, at 127.

53. Atkinson, Borrowing Equality, supra note 5, at 1454–55 (footnotes omitted) (quoting Tobias Barrington Wolff, The Thirteenth Amendment and Slavery in the Global Economy, 102 Colum. L. Rev. 973, 983 (2002)).

54. Id. at 1452–53, 1456.

only to dispossession but also incarceration. The penal system is linked to debt, dispossession, and disenfranchisement. Municipalities and states increasingly balance their budgets on the backs of the most marginalized, by extracting excessive fines through the penal system.[55] Even private debt can result in incarceration, in addition to the ordinary traps of indebtedness. Millions of Americans are threatened with arrest and incarceration for failure to pay public and private debt—including student loan and housing debt.[56]

Perhaps, though, it does not matter whether the system is purposefully dispossessing Black and other marginalized communities or accidentally doing so. Black and other marginalized individuals and communities are being dispossessed of wealth and income, and debt is the mechanism of this dispossession. Those in power, even if not actively in favor of this result, are in fact accepting an economic system that is wholly dependent on keeping much of its population, particularly the most marginalized, trapped in inescapable indebtedness. To accept such a system is a collective moral failing. Much like a society that permits the practice of torture, a society that relies on this wide-scale extraction and dispossession of its most marginalized is morally reprehensible. Our acceptance of it injures not only the human dignity of dispossessed borrowers but our collective human dignity as well.[57]

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55. See Wang, supra note 40, at 151–92; see also Matthew Menendez, Michael F. Crowley, Lauren-Brooke Eisen & Noah Atchison, Brennan Ctr. for Just., The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties 6 (2019) https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf [https://perma.cc/NNC2-8SW8] ("Since 2008, almost every state has increased criminal and civil court fees or added new ones, and the categories of offenses that trigger fines have been expanded."); Michael W. Sances & Hye Young You, Who Pays for Government? Descriptive Representation and Exploitative Revenue Sources, 79 J. Pol. 1090, 1090 (2017) ("Using data on over 9,000 cities, we show that the use of fines as revenue is both commonplace and robustly connected to the proportion of residents who are black."); Matthew Shaer, How Cities Make Money by Fining the Poor, N.Y. Times (Jan. 8, 2019), https://www.nytimes.com/2019/01/08/magazine/cities-fine-poor-jail.html (on file with the *Columbia Law Review*) ("[A] sizable number of cities, like Doraville, Ga., or Saint Ann, Mo., a suburb of St. Louis, have reported fines-and-fees revenue amounting to 10 percent or more of total municipal income.").

56. See ACLU, supra note 31, at 4 ("An estimated 77 million Americans—one in three adults—have a debt that has been turned over to a private collection agency. Thousands of these debtors are arrested and jailed each year because they owe money. Millions more are threatened with jail.").

57. See J.M. Bernstein, Torture, Pol. Concepts, https://www.politicalconcepts.org/torture-j-m-bernstein [https://perma.cc/3LML-2PFX] (last visited Oct. 2, 2020) ("What makes the effort of degradation possible in cases of rape and torture is that the human standing is compromised, conditioned from the inside . . . . Our standing as human is bestowed on us and remains dependent on relevant social others for its maintenance."); see also Márcio Ricardo Staffen & Mher Arshakyan, About the Principle of Dignity: Philosophical Foundations and Legal Aspects, 75 Revista Seqüência (Florianópolis) 43, 47 (2017) ("One's dignity is [thus] closely connected to the recognition of others' dignity. For example, one exercising torture not only violates the dignity of the victim but also morally

We live in a country in which an elderly married couple (ages seventy-eight and eighty-three) were jailed for failing to appear in a case involving a debt they owed their homeowners association—despite never having been served with notice.[58] While in jail, the husband "began vomiting blood and became non-responsive" and had to be transferred for emergency treatment.[59] Also in this country, a man who failed to pay a deficiency on his already-repossessed pick-up truck was arrested in front of his six-year-old disabled son, who "sobbed and ran, scared and confused, in and out of their home."[60] Twelve years after entering college, the median white borrower in the United States has paid only thirty-five percent of their original loan balance, but the situation for Black borrowers is much worse: Over the same twelve-year period, the median Black student loan borrower owes 113% *more* than their original loan balance.[61]

Most of us in this country cannot achieve our basic needs, including health, housing, and education, without resorting to borrowing. When borrowers are forced to turn to credit to survive, or when they try to pursue the American dream in precisely the way in which they are instructed—and then are unable to repay—they are disparaged, punished, dispossessed, and too often criminalized. It is a stain on our collective humanity that we permit such suffering and privation. Our human dignity is impaired by our implication in such harm.

II. HOW BORROWING EQUALITY ROBS US OF REAL SOLUTIONS TO POVERTY, INEQUALITY, AND SYSTEMIC RACISM

How do we extricate ourselves from this inhumane, unjust, racist system? Before attempting to tackle this question, it's worth mentioning another crucial implication of Atkinson's work. The bizarre and contradictory political rhetoric she observes not only leaves us with a system that cannot possibly do the equality work it *purports* to want to do but also leaves us in a trap. We have vanishingly small political capital left to do real structural-equality work because we are stuck devoting time and resources to defending the honor of borrowers and persuading Congress that they deserve rescue.

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demeans his own dignity by that same action . . . ." (citing Adeno Addis, The Role of Human Dignity in a World of Plural Values and Ethical Commitments, 31 Neth. Q. Hum. Rts. 403, 421 (2013))).

58. ACLU, supra note 31, at 8.

59. Id.

60. Id. at 19.

61. Ben Miller, New Federal Data Show a Student Loan Crisis for African American Borrowers, Ctr. for Am. Progress (Oct. 16, 2017), https://www.americanprogress.org/issues/education-postsecondary/news/2017/10/16/440711/new-federal-data-show-student-loan-crisis-african-american-borrowers [https://perma.cc/MX97-X9B4]; see also Hearing on Oversight of Bankruptcy Law and Legislative Proposals, supra note 22, at 4 (written statement of Dalié Jiménez, Professor of Law, University of California, Irvine School of Law) (citing Miller, supra).

The rhetoric Atkinson identifies is not only that credit is good and debt is bad but also that creditors are good and debtors are bad. Creditors are generous and virtuous. Borrowers are morally neutral, but if they struggle to pay then it is because of a moral failing—they were reckless, they made bad decisions, or they failed to educate themselves sufficiently.[62] Conservative policymakers and commentators focus on the "choice" of debtors to incur debt, and where they see culpability, they respond to this perception with punishment.[63] Perhaps this view will fall away now that such a vast swath of the country is struggling to repay its debts: One-third of the country could not make July rent or mortgage payments.[64] But a recognition that reliance on credit is linked to distress and injustice would threaten the entire system, so it is unlikely that wealthy individuals and corporations will acknowledge it.[65]

Because conservatives set up the rhetorical playing field, progressives are forced to play defense. We expend energy, time, and resources trying to prove that, in fact, borrowers are struggling to repay debts not through any moral failing but because of external circumstances such as job loss or medical emergencies. They are *not* culpable and, therefore, they deserve relief. Progressive policymakers and academics focus, then, on borrowers' lack of agency and victimhood.[66] We also focus on the creditors' disproportionate power and choice; we work to highlight the culpability of

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62. See Atkinson, Borrowing Equality, supra note 5, at 1447–50.

63. See id. at 1458–59, 1461.

64. Alicia Adamczyk, 32% of U.S. Households Missed Their July Housing Payments, CNBC: Make It (July 8, 2020), https://www.cnbc.com/2020/07/08/32-percent-of-us-households-missed-their-july-housing-payments.html [https://perma.cc/ZRB5-N748].

65. As Atkinson points out, sometimes rather than suggest a moral failing, conservatives suggest that the problem is merely a lack of information—borrower education is seen as key to equal credit access and thus to equality. See Atkinson, Borrowing Equality, supra note 5, at 1426 ("This regulation was borne of the view that increasing greater access to private loans could be an effective tool in addressing social discontent in and among marginalized communities."). But the argument that more information would prevent borrowers from being trapped in predatory loans has been repeatedly disproven. To give just one powerful illustration, a Pew Charitable Trusts study of over seven hundred payday loan borrowers reported that thirty-seven percent of borrowers found themselves in such dire financial situations that they would have accepted the payday loan on any terms offered. See Pew Charitable Trs., How Borrowers Choose and Repay Payday Loans 21 (2013), http://www.pewtrusts.org/~/media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-(1).pdf [https://perma.cc/UF3M-9U5V].

66. See, e.g., 151 Cong. Rec. 3009 (2005) (statement of Sen. Feingold) ("[R]esponsible people who have worked toward retirement their whole lives . . . find themselves in a financial emergency and are unable to pay their debts. These people turn to the bankruptcy system as a last resort."); Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, The Fragile Middle Class: Americans in Debt 15 (2000) (finding that nearly two-thirds of bankruptcy filings are related to employment problems); Ondersma, Small Debts, supra note 31, at 2213 ("[M]any impoverished individuals and families have no choice but to turn to credit, particularly when faced with unexpected expenses or unexpected drops in income. Individuals are often forced to choose between servicing their debt and meeting their basic needs.").

creditors—those who lend on predatory terms by extending credit while knowing it is unlikely the borrower will be able to repay, and so forth.[67] Perhaps there is a fear amongst progressives of acknowledging the agency of debtors because we worry such a recognition of agency might bolster the idea that education and disclosure are the solutions to the problem of overindebtedness.[68]

By being trapped in this position of defending the innocence of debtors and trying to expand their opportunities to debt relief, progressives are distracted from a wholesale reevaluation of the economy and miss the opportunity to fully dismantle systems of white supremacy and exploitation. That is, with borrowers being vilified, progressives often focus disproportionately on defense and rescue rather than changing the racist and exploitative structure of our entire economic system.[69] This rhetorical trap obscures the way in which white supremacy and the exploitation of labor is foundational to our economic system. It prevents us from becoming fully aware that both our economic system and the power structure that upholds it rely on debt in order to function. Without deeply indebted consumers, the system would collapse.[70] The rhetorical trap also obscures the ways in which Black and other marginalized borrowers are routinely exploited and dispossessed in this system.

Furthermore, this rhetorical trap not only obscures the role of power and white supremacy but also makes us forget the importance of human rights. With conservatives casting struggling debtors as strategic opportunists,[71] we feel no choice but to focus on borrowers' victimhood rather than

67. Atkinson, Borrowing Equality, supra note 5, at 1445, 1465–66.

68. Michael D. Sousa, The Principle of Consumer Utility: A Contemporary Theory of the Bankruptcy Discharge, 58 U. Kan. L. Rev. 553, 555–56 (2010) (noting that although "consumers are not entirely blameless in amassing unmanageable debt obligations," even when Americans are trying to cope with a recession, "incremental savings and a newly found aversion to borrowing will not rescue the average American consumer from the noted 'debt trap'").

69. Rather than focusing energies on challenging the structural issues of our economic system, many nonprofits and advocacy groups become inundated with fighting against legislation that paints debtors as undeserving of debt relief. A perfect example of this defensive position in progressive advocacy is evident in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") debates, where groups like the National Women's Law Center urged Congress to oppose the legislation. Letter from Nat'l Women's L. Ctr. to John Conyers, Jr., Rep., U.S. House of Reps. (March 14, 2005), *in* 151 Cong. Rec. 6389 (requesting Congress to vote against the legislation as it would disproportionately affect "economically vulnerable women and their families"). The Leadership Conference on Civil Rights also prepared a letter in opposition to BAPCPA stating that "disadvantaged groups in our society disproportionately find themselves in bankruptcy courts as a result of economic discrimination in its many forms." Letter from Leadership Conf. on C.R. to U.S. House of Reps. (March 14, 2005), *in* 151 Cong. Rec. 6390 (requesting Congress to vote against the legislation as it would further disadvantage minority groups, specifically African American and Hispanic communities, who already suffer due to structural inequity).

70. See infra note 73.

71. See Torie Levine, Note, The Devious Debtor: 11 U.S.C. § 523(a)(2)(B) and the Need for a More Equitable Outcome, 13 Brook. J. Corp. Fin. & Com. L. 239, 253–55 (2018)

focusing on their *rights*, and all of our rights, to live in a just, non-exploitative society. We are prevented from asking fundamental questions: Why is debt/credit necessary for survival and success in this country? What does it say about our collective humanity and what does it take away from our collective human dignity? Instead of focusing on defending and rescuing debtors, we should be focusing on structural reform so that we can have a society that does not require massive overindebtedness in order for individuals and the economy to survive and function.

Atkinson shows so clearly that inequality cannot be solved by improving access to credit or by ensuring equitable credit terms. The systemic exclusion of Black Americans, often at the behest or with the endorsement of federal, state, and municipal governments,[72] means that credit can never be a solution to structural inequality and white supremacy. Extraction and exploitation are inextricably linked with debt, and debt is the engine of our economy.[73]

As Atkinson explains, relying on credit to do equality work "places the burden of solving for entrenched and intractable inequality on marginalized borrowers rather than on regulators, Congress, lenders, or other

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(arguing that the Supreme Court's decision in *Lamar v. Appling* "enables fraudsters to take advantage of innocent [creditors] by orally lying about their financial condition, then having their debt discharged"); Mallory Velten, Comment, Debtors as Predators: The Proper Interpretation of "a Statement Respecting the Debtor's . . . Financial Condition" in 11 U.S.C. § 523(a)(2)(A) and (B), 30 Emory Bankr. Dev. J. 583, 584–85, 610–12 (2014) (describing debtors as "dishonest" borrowers who "file for bankruptcy to avoid repaying debts they acquired through false representations, false pretenses, or other fraudulent means"). Members of Congress described debtors having a penchant for dishonesty while debating BAPCPA in 2005. See 151 Cong. Rec. 2998 (statement of Sen. Durbin) (citing examples of Bowie Kuhn and Burt Reynolds as high-income debtors who gamed the system); see also Bankruptcy Reform Act of 1999 (Part III): Hearing on H.R. 833 Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary, 106th Cong. 9 (2000) (statement of Rep. Roukema, Chairwoman, H. Subcomm. on Fin. Insts.) (arguing that bankruptcy was becoming a "first stop financial planning tool rather than a last resort"); 151 Cong. Rec. S1813-14 (daily ed. Mar. 1, 2005) (statement of Sen. Frist) (asserting that people plan their bankruptcies strategically); 144 Cong. Rec. H10234 (daily ed. Oct. 9, 1998) (statement of Rep. Goodlatte) ("Under the current system, some irresponsible people filing for bankruptcy run up their credit card debt immediately prior to filing knowing that their debts will soon be wiped away."); 144 Cong. Rec. S10787 (daily ed. Sept. 23, 1998) (statement of Sen. Grassley) ("The fact is that some people use bankruptcy as a convenient financial planning tool to skip out on debts they could repay."); 144 Cong. Rec. S10190 (daily ed. Sept. 10, 1998) (remarks of Sen. Bentsen) ("With growing frequency, bankruptcy is being treated as a first choice rather than a last resort, a matter of convenience rather than necessity.").

72. Redlining continues to be a notorious example of how Black Americans are routinely barred from accessing credit. See Bruce Mitchell & Juan Franco, Nat'l Cmty. Reinvestment Coal., HOLC "Redlining" Maps: The Persistent Structure of Segregation and Economic Inequality 4 (2018), https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf [https://perma.cc/HT2Q-YG5V].

73. See Atkinson, Borrowing Equality, supra note 5, at 1415, 1451 (explaining how access to loans has become "central in the pursuit of a better life" and "everything in state-driven commercialized markets can be commodified . . . in order to satisfy a money debt").

stakeholders who freely participate in the reproduction of existing inequality. Congress thus advises marginalized groups to borrow their way to a better livelihood and social position."[74] Because this approach cannot possibly succeed and only results in oppressive overindebtedness, we are stuck focusing on debt relief and therefore lack time, resources, or political capital for more fundamental changes. We are stuck defending the innocence of debtors and scrambling to unbury them.

In other articles, I argue that as long as we have a system in which credit is necessary for survival (of both individuals and the economy as a whole), we must have access to debt relief.[75] I worry, in fact, that my earlier proposals for easier access to debt relief are problematic because accessible debt relief might give legitimacy to the system that we have, when in reality the idea that one must become indebted in order to survive is a collective moral failing.

We should not give disproportionate political energy and resources to rescuing debtors. Instead, we could focus on completely restructuring our society so that individuals (and municipalities and states!) are not *required* to turn to credit for their own survival and for the survival of the economy. Of course, as I discuss further in the next section, credit can sometimes be beneficial. In some instances, it can be an opportunity for expansion and growth—but it should never be the only means of achieving economic stability or security. Such a system impinges on the dignity of all who rely on it; to tolerate such a system is a moral failure.

III. Pursuing Real Solutions

After showing persuasively that credit will obviously fail as a tool for equality, and that this rhetorical trick of treating credit as a social good and debt as a social ill obscures this failure, Atkinson in closing says that "any antidote to this deeply embedded pathology is certainly multifaceted and complex . . . ."[76] I think, however, if we take insights from her earlier paper, *Rethinking Credit as Social Provision*, and join them with her insights in *Borrowing Equality*, she does present an antidote: an abolitionist approach to survival debt—debt that is necessary to achieve a life of human dignity.

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74. Id. at 1461.

75. See generally Chrystin Ondersma, A Human Rights Framework for Debt Relief, 36 U. Pa. J. Int'l L. 269, 275–76 (2014) (prescribing that a just insolvency regime must be accessible to debtors); Ondersma, Small Debts, supra note 31. In pertinent part, I have argued that "if a government is unwilling to ensure access to basic needs (including housing, water, health care, and food), and debtors will thus be required to incur debt in order to cover their basic needs—particularly if an emergency arises—a robust and accessible debt relief system is crucial." Id. at 2222. The fact that I and so many others must spend time arguing for debt relief is itself a problem—we are distracted from focusing on arguments for achieving a system in which no one needs to become indebted in order to meet their basic needs and live a life of human dignity.

76. Atkinson, Borrowing Equality, supra note 5, at 1468–69 (citing Derrick Bell, Racial Realism, 24 Conn. L. Rev. 363, 375–76 (1991)).

In *Rethinking Credit as Social Provision*, Atkinson persuasively disputes the entire premise that credit can ever be used in lieu of a safety net.[77] Unless individuals can earn more in the future, debt can never improve their ability to meet their basic needs.[78] *Rethinking Credit as Social Provision* is a persuasive demonstration that, in order to achieve racial and economic justice, a robust social safety net is far more important than access to credit. She also shows that access to credit, even equitable access to credit, will never be a solution to poverty.[79] She urges us, therefore, to entirely cease focusing our attention on increasing access to credit, arguing that "it is time to shift the conversation about feasible social provision firmly away from credit, particularly in our time of persistent and concentrated economic decline and inequality."[80]

She questions even proposals that rely on fair, accessible lending as part of a solution to poverty, such as Professor Mehrsa Baradaran's proposal for postal banking.[81] She says:

> [B]y continuing to focus on credit as an avenue of social provision, these proposals continue to situate credit within the larger individualistic narrative of welfare reform for low-income Americans. Even though the aim is to provide a purportedly safe alternative to high-interest payday loans and credit offered by other fringe lenders, the solution is still market based and dangerous. Moreover, this focus on credit simply provides an expedient diversion from the more difficult and intractable political questions concerning persistent, intergenerational poverty and why low-income Americans continue to fail in the marketplace at ever-increasing rates. Thus, even well-intentioned credit essentially places the burden on the low-income borrower to borrow her way out of a structurally determined fate and, if unsuccessful, to bear the consequences of the resulting debt. Simply put, credit of any quality will strip wealth from poorer communities when even repaying the principal alone is difficult, much less the interest. Given the relative economic despair of low-income borrowers, credit presents more interpersonal redistributive danger than it does intertemporal, intrapersonal relief.[82]

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77. Atkinson, Rethinking Credit, supra note 29, at 1152.

78. Id. at 1093.

79. Id.

80. Id. at 1159. It's worth noting that the idea that "access to credit" is the key to equality is now taking root around the globe; even in the human rights context, human rights advocates considering the consumer credit context mostly focus on nondiscrimination and access to credit rather than ensuring that credit is not necessary to meet basic needs. See Chrystin Ondersma, Tackling Issues in Consumer Credit: The Role of Human Rights, *in* Discrimination, Vulnerable Consumers and Financial Inclusion: Fair Access to Financial Services and the Law (Cătălin-Gabriel Stănescu & Asress Adimi Gikay eds., forthcoming Dec. 2020) (manuscript at 10–14) (on file with the *Columbia Law Review*).

81. Mehrsa Baradaran, How the Other Half Banks: Exclusion, Exploitation, and the Threat to Democracy 210–11 (2015).

82. Atkinson, Rethinking Credit, supra note 29, at 1161.

While *Borrowing Equality* is not focused on low-income borrowers themselves, it is low-income borrowers who are most likely to be caught in a trap of overindebtedness.[83] Thus, together her articles show that credit fails both as a tool for redressing poverty and as a tool for redressing inequality. Together, Atkinson's articles support an abolitionist approach to what I call survival debt.

In thinking about our response to policymakers' efforts to solve both poverty and structural inequality with credit, it is worth bifurcating two kinds of debt: debt that is incurred out of necessity, for survival, and debt that is not required for survival but secures an opportunity for advancement, opportunity debt. Some debt, however, that seems to be opportunity debt may really be better characterized as survival debt. After all, everyone needs a home, and home ownership may be a safer or more affordable option than renting in some places;[84] similarly, most jobs require a college degree,[85] so in a way educational debt is also survival debt. Still, when examining policies around debt, it may be useful to consider the question of whether such debt is debt that is necessary for a life of human dignity, or whether it is debt incurred not out of necessity, but to achieve an opportunity. Congress seems to act as if there is no such thing as survival debt, and that all credit extended is merely an optional opportunity for advancement.[86] Read together, *Rethinking Credit as Social Provision* and *Borrowing Equality* provide the start of a path forward in terms of a new approach to both survival and equality.

First, with respect to survival debt, *Rethinking Credit as Social Provision* takes an abolitionist approach, not a reformist approach. That is, credit should never be used as a tool for addressing poverty or emergencies. For an individual struggling to make ends meet, the only ways to cover a shortfall are severe privation (going without food, utilities, or medical care) or turning to credit.

We should thus not spend time, energy, and resources on policies that propose credit-based solutions to poverty and emergencies, even if the

83. See supra note 31 (describing how and why low-income Americans are most likely to become overindebted).

84. See, e.g., Michele Lerner, Report: Renting a Home Is Cheaper than Buying One in the Largest U.S. Counties, Wash. Post (Feb. 19, 2020), https://www.washingtonpost.com/business/2020/02/04/report-renting-home-is-cheaper-than-buying-one-largest-us-counties (on file with the *Columbia Law Review*) (stating that while renting is more affordable than buying in the largest counties, buying is still more affordable than renting in the majority of counties).

85. Anthony P. Carnevale, Nicole Smith & Jeff Strohl, Georgetown Pub. Pol'y Inst., Recovery: Job Growth and Education Requirements Through 2020, at 15 (2013), https://1gyhoq479ufd3yna29x7ubjn-wpengine.netdna-ssl.com/wp-content/uploads/2014/11/Recovery2020.FR_.Web_.pdf [https://perma.cc/KN5W-VMT5].

86. See Atkinson, Borrowing Equality, supra note 5, at 1407–08 ("Congress acted in part to address the demands of marginalized groups who . . . came to believe that equal access to conventional loans and purchase money was integral to their broader quest for equality and first-class citizenship." (footnotes omitted)).

credit extended would be on very favorable terms—even if it is interest free. Again, this is because someone who is already experiencing an income-shortfall can only repay if their income increases—and this will simply never occur in many cases.[87] Imagine the degree of desperation and suffering nationwide if, during this pandemic, the state and federal governments had made unemployment and relief checks loans instead of grants. And as the aid begins to expire and evictions skyrocket, we will tragically witness the consequences of debt-reliant survival on a massive scale in real time. The months of lost income are lost forever, so repayment would be a severe hardship and an impossibility for many. And yet we accept a country in which people who face income shortfalls or sudden expenses are routinely forced to turn to credit in order to survive, whether it be credit cards, payday loans, pawn shops, or overdraft. This is untenable and immoral; it injures the dignity of each borrower as well as our collective dignity.

In the case of individuals facing sudden income shortfalls or sudden expenses, the government should provide grants, not loans. Indeed, this is already the case in some cities, including New York City. Under an emergency assistance program called the "One Shot Deal," some low-income residents can access an emergency grant to pay for housing, utilities, or other essentials.[88] Residents are eligible to use the program once a year.[89]

Under an abolitionist approach to survival debt, all proposals should have the goal of eliminating survival debt. If we use Critical Resistance's guide to police abolition as a template,[90] no proposal should result in an increase of resources or attention on credit-based solutions to poverty or emergencies, or to inequality. This means no proposals that involve extension of credit as part of the solution to poverty or inequality. No person should have to borrow in order to survive.

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87. Atkinson, Rethinking Credit, supra note 29, at 1093.

88. One Shot Deal, N.Y.C.311, https://portal.311.nyc.gov/article/?kanumber=KA-01104 [https://perma.cc/Q7H3-DRFU] (last visited Oct. 2, 2020).

89. Jackie Maroney, How New Yorkers Can Pay Rent During the Coronavirus Pandemic, PropertyNest (Aug. 19, 2020), https://www.propertynest.com/blog/rent/how-new-yorkers-can-pay-rent-during-coronavirus-shutdown/#:~:text=Keep%20in%20mind%20that%20only,to%20a%20NYC%20Job%20Center [https://perma.cc/RZ2A-DK8M].

90. Reformist Reforms vs. Abolitionist Steps in Policing, Critical Resistance, https://static1.squarespace.com/static/59ead8f9692ebee25b72f17f/t/5b65cd58758d46d34254f22c/1533398363539/CR_NoCops_reform_vs_abolition_CRside.pdf [https://perma.cc/36BF-6A5H] (last visited Oct. 2, 2020). The chart details the differences between seeking reform and seeking abolition of policing. Wherever more resources are devoted to policing, it is under a reformist perspective and will not aid the end goal of reducing the scale of policing. For example, increasing training for police forces will not reduce the scale of policing as it will increase the scope of policing. In contrast, suspending the use of paid administrative leave for cops under investigation will further the goal of reducing the scale of policing by limiting financial support for police. See id. Here, if our goal is to eliminate survival debt, we have to operate under the abolitionist model instead of pouring more resources into the current system.

Because we have a system in which so many must borrow in order to survive, in the short term, access to debt relief will continue to be essential. However, I now question whether new proposals for debt relief (including some of my own) are the best use of time and resources. Additionally, there is the concern that robust debt relief will entrench and legitimize the idea that credit is a valid tool for redressing income shortfalls.

Professor Atkinson includes a debt-relief proposal as part of the solution, which is hard to object to given that I have spent so much time and energy focusing on the importance of debt relief. But Professor Atkinson herself has persuaded me that we should not focus on debt-relief measures as solutions; in this case in particular, the proposed solution is rather narrow, as it responds to only particular types of abusive debt.[91] Consequently, I worry that individuals and families, because of the stigma associated with bankruptcy, would turn to this narrower solution when a global discharge might be more beneficial. That is not to say that the solution is to spend more time and resources focusing on increasing access to bankruptcy, although in fact I believe—and I am sure Professor Atkinson also agrees—that access to bankruptcy is important, but if we have limited opportunities for reform we should focus on those most likely to alleviate burdens for the most people—and particularly those for the most marginalized.

Again, debt-collection reforms will likely continue to be essential in the short-term, but we should consider what will be the most effective and simplest methods of shifting power and resources from creditors to borrowers. For example, if creditors could only collect, garnish, or repossess after they have proven that the borrower has the ability to both repay and meet their basic needs, this would take care of most of our problems with debt collection (if it seems too burdensome to creditors, consider whether you really believe that it is fairer to place that burden of proof on impoverished or struggling borrowers). Under an abolitionist approach to survival debt, we must also make sure that debt-relief proposals do not entrench and legitimize the reliance on credit as a means for a life of human dignity.

Moving from survival debt to opportunity debt, it is important to reiterate that much of the debt that might be considered opportunity debt in fact may be survival debt.

Housing and education, for example, are not luxuries. Everyone is expected to go to college, which, for most people, requires borrowing.[92] Everyone also needs housing, and, as Atkinson points out, policymakers have long sent the message that home ownership should be the goal for

91. Atkinson, Borrowing Equality, supra note 5, at 1461–65.

92. Carnevale et al., supra note 85, at 15 ("By 2020, 65 percent of all jobs will require some form of postsecondary education or training."); Edgar O. Olsen, Urb. Inst., Promoting Homeownership Among Low-Income Households 1–2 (2007), https://www.urban.org/sites/default/files/publication/46626/411523-Promoting-Homeownership-among-Low-Income-Households.PDF [https://perma.cc/E64A-X6T5] (proposing reforms to promote homeownership among low-income families).

everyone, and that borrowing is the means by which this goal can be achieved. Policymakers often suggest that if borrowers are "responsible," our borrowing will be successful in achieving and retaining a home or education. But, as Atkinson shows, there are precious few policies in place to ensure equitable income; furthermore, access to wealth is limited because of centuries of dispossession and discrimination.[93] So, the solution offered is to borrow, but the amount necessary to borrow in order to achieve these measures of success is so much greater than the available income. It is simply not possible, for many, to access an income sufficient to both repay and live a life of dignity—much less accumulate any wealth. No one should become indebted for life in order to get a college degree or stable housing.

Every human being needs education, transportation, and housing. A number of countries manage to give most of their citizenry access to housing, education, and medical care without the startling levels of consumer indebtedness we have in the United States.[94] Does that mean that there are never circumstances in which it is appropriate for borrowing to be part of education and housing? Of course not. But access to housing and access to a basic education should not require indebtedness. I understand that much of the housing wealth that the (mostly white) middle class has amassed has been contingent on borrowing. However, as Atkinson shows, that does not mean that borrowing is the key to wealth and income equality. Again, given that Black Americans have persistently and repeatedly been dispossessed of income and wealth, reparations must play an integral role in this work.

Although it does not seem that Atkinson would take an abolitionist approach to all housing debt, and perhaps not to all educational debt (such as graduate school debt), *Borrowing Equality* supports the proposition that no one should have to become indebted in order to receive an education or housing.[95] The primary reasons for wealth and income disparities are not that there is insufficient credit available to the marginalized. The primary reason is not even unequal borrowing terms. The primary reason is historical discrimination, exclusion, and dispossession. Our white supremacist power structure is maintained by the subordination of and extraction from Black and other marginalized communities, and debt is a primary tool for this extraction. White Americans, with government sanction and abetment, have persistently deprived and dispossessed Black Americans of land, housing, and businesses, and have excluded them from

93. Atkinson, Rethinking Credit, supra note 29, at 1152.

94. See Household Debt, Loans and Debt Securities, IMF, https://www.imf.org/external/datamapper/HH_LS@GDD/CAN/GBR/USA/DEU/ITA/FRA/JPN [https://perma.cc/UMW7-4FDH] (last visited Oct. 2, 2020) (noting that there were only twelve countries with higher percentages of household loans and debt securities than the United States in 2018, out of eighty-two countries with reported data).

95. Atkinson, Borrowing Equality, supra note 5, at 1409–10.

educational opportunities.[96] Housing and education should be accessible to all. For this to come close to being possible, at a minimum, we must begin with reparations to address the centuries of theft and extraction from Black communities.

When it comes to true opportunity borrowing, such as starting a new business or buying a home, access to fair credit on good terms and anti-discrimination will be essential. Borrowing can advance equity when it offers access to an opportunity, and when future income is sufficient to repay while also allowing for a standard of living consistent with human dignity. We know that Black-owned businesses are twice as likely to be rejected for loans,[97] and that Black homeowners face unfair business terms. This discrimination must stop. But ending discrimination will not be enough to level the playing field. Centuries of exclusion and dispossession mean that reparations must be an essential part of equality work, including when it comes to business and home ownership opportunities.

If credit is not the solution, how do we tackle these problems? In a recent paper, my colleague Matteo Gatti and I explored a similar problem in the context of corporate law: In the corporate law realm, there exists a similar rhetorical trap, in which inequality debates are centered around the purpose of the corporation.[98] Is the corporate purpose to maximize profits or to serve all stakeholders? But, like the debate around credit and debt, this is a rhetorical trap—in this case, one that sets the problem exclusively in the corporate governance realm and distracts from policy proposals that would result in real, structural change.[99] Professor Gatti and I suggest that, to tackle the problem of inequality, we need to look first at the drivers of inequality, and we provide evidence that the main drivers of inequality are outside the corporate law realm: tax and labor law, financial regulation (here is where dispossession via debt entrapment plays a key role), the welfare state, and antitrust laws that can do the real work of redressing inequality, together with a robust anti-discrimination regime and reparations.[100] Even for low-income white Americans, lack of access to credit is far from the principal barrier to a middle-class life.[101] Instead, the erosion of labor rights and antitrust laws, financial deregulation, and the decimation of the social safety net have been drivers of inequality across

96. Richard Rothstein, The Color of Law: A Forgotten History of How Our Government Segregated America 64–65 (2017); see also Anderson, supra note 51, at 3–5.

97. Gene Marks, Black-Owned Firms Are Twice as Likely to Be Rejected for Loans. Is This Discrimination?, Guardian (Jan. 16, 2020), https://www.theguardian.com/business/2020/jan/16/black-owned-firms-are-twice-as-likely-to-be-rejected-for-loans-is-this-discrimination [https://perma.cc/P9NK-2L8L].

98. Matteo Gatti & Chrystin Ondersma, Can a Broader Corporate Purpose Redress Inequality? The Stakeholder Approach Chimera, 46 J. Corp. L. (forthcoming 2020) (manuscript at 10–11), http://ssrn.com/abstract=3547791 (on file with the *Columbia Law Review*).

99. Id.

100. Id. (manuscript at 9).

101. See Atkinson, Rethinking Credit, supra note 29, at 1100 ("Government-subsidized, private credit became a catalyst for building the white middle class . . . .").

all races.[102] Systemic problems such as race discrimination, poverty, and inequality cannot be solved with credit any more than they can be solved with corporate governance changes. Centuries of discrimination, exploitation, dispossession, and disenfranchisement mean that wholesale restructuring of the economy is essential. And reparations must be an essential feature of this restructuring.

Atkinson's body of work persuasively shows that we must no longer accept credit as the solution to structural crises such as poverty, inequality, and systemic racism. We are in the midst of a severe social and economic crisis now, with millions unemployed and facing eviction. There will undoubtedly be calls to turn to credit to solve these problems, and Atkinson's work shows that we must not fall for this. A just society and economy will require tremendous structural work and innovation—as well as significant redistribution. If we are serious about fighting the problems of poverty, inequality, and racial injustice, we will reject borrowing as a remedy.

In order to tackle inequality, we need to address structural problems outside the borrowing context. Our unions must be empowered and our antitrust laws must be more robust and enforced. We must have meaningful financial regulation and the prices of housing, health care, and education must be within reach for all Americans. To do this, we have to also cope with and escape the rhetoric around government assistance: this idea that accepting direct aid is a moral failing and accepting credit is not. We all have a right to a society that does not require many of its citizens—especially Black and other citizens of color—to suffer severe indebtedness in order to survive. We all have a right to, and must demand, a society that does not rely on the dispossession and exclusion of its most marginalized members in order to function.

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102. Gatti & Ondersma, supra note 98, at 26.