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Discovering that The Poor Pay More: Race Riots, Poverty, and the Rise of Consumer Law

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DISCOVERING THAT *THE POOR PAY MORE*: RACE RIOTS, POVERTY, AND THE RISE OF CONSUMER LAW

*Norman I. Silber**

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INTRODUCTION

David Caplovitz earned a Ph.D. in Sociology from Columbia University in 1960, became a director of Columbia University's Bureau of Applied Social Research, and then a Professor of Sociology at the City College of New York.¹ His Ph.D. thesis, which investigated the spending habits of low-income urban consumers, was published in 1963 by the Free Press, with the title, *The Poor Pay More*.² He is remembered today primarily for that book, and for other writing on the subject of the financial difficulties faced by poor consumers.³ The insights of David Caplovitz helped courts, law-

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1. See Wolfgang Saxon, *Dr. David Caplovitz, an Authority On Spending Habits, Dies at 64*, N.Y. TIMES (Oct. 3, 1992), <http://www.nytimes.com/1992/10/03/obituaries/dr-david-caplovitz-an-authority-on-spending-habits-dies-at-64.html> [<https://perma.cc/Z3VG-TTHQ>].

2. DAVID CAPLOVITZ, *THE POOR PAY MORE: CONSUMER PRACTICES OF LOW-INCOME FAMILIES* (1963).

3. His other work on consumer finance, in chronological order, includes: David Caplovitz, *The Consumer Behavior of Low-Income Families*, Nat'l Op. Research Ctr., Univ. of Chi. (1961); DAVID CAPLOVITZ, *THE EVENTS FOLLOWING UPON THE*

makers, and many middle-class Americans appreciate the complicated relationship between culture, law, and the exploitation of poor consumers.

This Symposium Issue is centered around the fiftieth anniversary of the publication of *The Poor Pay More*, but please note that a hardcover edition appeared earlier, in 1963—not 1967. This means that we are celebrating, now, the *fifty-fourth* anniversary of the book. Nevertheless, I applaud the *Journal* for its decision to hold an event this year, which is the fiftieth anniversary of the *paperback*, and it is the paperback whose publication occurred at the height of its major impact.⁴

I would like to offer a short explanation about why *The Poor Pay More* came to be among the most significant factors stimulating the reconstruction of consumer financial protection law in America and around the world.

I. UNRAVELING DREAMS FOR A GREAT SOCIETY

The assassination of President John F. Kennedy in November 1963 brought with it a period of political anxiety and social upheaval.⁵

DEFAULT (Bureau of Applied Research, Colum. Univ. 1970); DAVID CAPLOVITZ & ERIC SINGLE, DEBTORS IN DEFAULT, (Bureau of Applied Soc. Research, Colum. Univ. 1971); DAVID CAPLOVITZ, THE MERCHANTS OF HARLEM: A STUDY OF SMALL BUSINESS IN A BLACK COMMUNITY (1973); DAVID CAPLOVITZ, CONSUMERS IN TROUBLE: A STUDY OF DEBTORS IN DEFAULT (1974); DAVID CAPLOVITZ, MAKING ENDS MEET: HOW FAMILIES COPE WITH INFLATION AND RECESSION (1979). Other writings, in chronological order, include DAVID CAPLOVITZ ET AL., STUDENT-FACULTY RELATIONS IN MEDICAL SCHOOL: A COMPARATIVE ANALYSIS (Bureau of Applied Social Research, Colum. Univ. 1960); DAVID CAPLOVITZ & CANDACE ROGERS, SWASTIKA 1960: THE EPIDEMIC OF ANTI-SEMITIC VANDALISM IN AMERICA (Anti-Defamation League of B'nai B'rith 1961); David Caplovitz, In the Shadows of the Bomb: An Inquiry into the Public Mood During the Cuban Crisis, Nat'l Op. Research Ctr., Univ. of Chi. (1963); DAVID CAPLOVITZ & HARRY LEVY, INTERRELIGIOUS DATING AMONG COLLEGE STUDENTS (Bureau of Applied Soc. Research, Colum. Univ. 1965); NORMAN M. BRADBURN & DAVID CAPLOVITZ, REPORTS ON HAPPINESS (1965); David Caplovitz, *The Drug Culture at the Work Place*, 6 INT'L J. SOC. 82 (1976); David Caplovitz, *Involvement in the Broad Drug Culture*, 6 INT'L J. SOC. 111 (1976); DAVID CAPLOVITZ, THE WORKING ADDICT (1976); DAVID CAPLOVITZ & FRED SHERROW, THE RELIGIOUS DROP-OUTS: APOSTASY AMONG COLLEGE GRADUATES (1977); DAVID CAPLOVITZ, STUDENT-FACULTY RELATIONS IN MEDICAL SCHOOL: A STUDY OF PROFESSIONAL SOCIALIZATION (1980); DAVID CAPLOVITZ, THE STAGES OF SOCIAL RESEARCH (1983).

4. DAVID CAPLOVITZ, THE POOR PAY MORE: CONSUMER PRACTICES OF LOW-INCOME FAMILIES (1967) (paperback).

5. For more on the historical events described herein, fine studies of this period include ROBERT DALLEK, FLAWED GIANT: LYNDON JOHNSON AND HIS TIMES 1961–

Hoping to mitigate traumatic discontinuity, Lyndon Johnson almost immediately pushed forward plans for a “War on Poverty” as well as a new Civil Rights Law that would, hopefully, become Kennedy’s legacy as well as his own. Johnson took up these objectives and other measures to build a “Great Society” with the determination that the nation would combat racism and would combat poverty.

But combat in Southeast Asia interrupted his domestic crusades. Military troops in Vietnam increased from approximately 16,000 at the end of 1963 to 184,000 two years later.⁶ The buildup did not defeat the enemy, however, and the difficulties of military success emerged through daily news reports. The War became increasingly unpopular. Particularly divisive was the class-biased, compulsory military draft, which depended on the urban poor and readily permitted college students’ deferments. The War also devoured the domestic goals of the Johnson Administration. Budgetary resources for the Great Society diminished, despite assurances that the nation could afford guns, and butter, too.

Along with diminished resources came the disintegration of a social consensus over domestic priorities and methods. The very spotlight that had been cast by civil rights leaders and political progressives also highlighted disagreements over the causes and cures for poverty and for racism. From the mid-1960s, social indicators exposed a generational divide between young people and their elders, a divide over proper relations between the sexes, a divide over proper policing and the treatment of criminal defendants, and—perhaps most explosively—heightened racial antagonism.

II. RACE AND ECONOMIC JUSTICE

During the Johnson years, violence, vandalism, and civil disorder appeared in scattered cities nationwide.⁷ During the summers of 1964 and 1965 riots happened in Rochester, New York; Harlem; Philadelphia; and Watts, California. In 1966 there were race riots in predominantly poor black neighborhoods in many more cities, including Chicago, Atlanta, Cleveland, Lansing, Michigan, and

1973 (1999); ERIC F. GOLDMAN, *THE TRAGEDY OF LYNDON JOHNSON* (1969); DORIS KEARNS GOODWIN, *LYNDON JOHNSON AND THE AMERICAN DREAM* (1975).

6. See *The Vietnam War: Military Statistics*, GILDER LEHRMAN INST. OF AM. HISTORY, www.gilderlehrman.org/history-by-era/seventies/resources/Vietnam-war-military-statistics [https://perma.cc/N5CA-DXZR] (using statistics from the United States Department of Commerce).

7. See generally JANET L. ABU-LUGHOD, *RACE, SPACE, AND RIOTS IN CHICAGO, NEW YORK, AND LOS ANGELES* (2007).

Waukegan, Illinois. The following year, 1967, brought more rioting in cities including Roxbury, Massachusetts; Durham, North Carolina; Buffalo, New York; Milwaukee, Wisconsin; Cairo, Illinois; Memphis, Tennessee; Tampa, Florida; and Detroit, Michigan. In 1968—the year in which Martin Luther King and Robert Kennedy were assassinated—there were large riots in Detroit, Chicago, and Newark. In nearly all of these cities, significant property destruction occurred as rioters trashed and burned retail stores and housing. Shootings and stabbings caused injuries and fatalities. In several cases, demonstrations prompted violent confrontations with police and guardsmen. Business districts and white merchants appeared to be specifically targeted by some rioters, and in many cases the damage to stores was so severe that shopping districts never recovered.

III. THE SEARCH FOR GOOD EXPLANATIONS

Race riots have a long, sad history in America, but the rioting in the 1960s was popularly understood in the white community as a new social pathology—frightening, mysterious and nearly incomprehensible.⁸ The compelling need to understand what was going on was refracted through art, entertainment, and civic discourse, in newspapers and magazines, and in the evening news. Day after day, understanding the sources for unrest in inner cities became an urgent concern. While white segregationists contended that the riots were the result of racially integrated neighborhoods and the erosion of respect for law and order, white liberals and many leaders of the black community argued that the riots were the result of inadequate job opportunities, segregated housing patterns, and white racism more generally.⁹ Radicals on the Left argued that the riots were the inevitable, bitter fruit of class and race oppression.¹⁰

In 1967 President Johnson established a National Advisory Commission on Civil Disorders, chaired by Governor Otto Kerner of Illinois, to determine what was happening, why it was happening, and

8. See *id.* at 3–4 (2007); Daniel J. Myers, *Racial Rioting in the 1960s: An Event History Analysis of Local Conditions*, 62 AM. SOC. REV. 94, 106 (1997) (revisiting data and conclusions in Seymour Spilerman, *The Causes of Racial Disturbances*, 35 AM. SOC. REV. 627 (1970)); see also Virginia Postrel, *The Consequences of the 1960s Race Riots Come Into View*, N.Y. TIMES (Dec. 30, 2004), <http://www.nytimes.com/2004/12/30/business/the-consequences-of-the-1960s-race-riots-come-into-view.html> [https://nyti.ms/2lnsfH].

9. See ABU-LUGHOD, *supra* note 7, at 3–4.

10. See *id.* at 4–7.

how it could be prevented.¹¹ After a period of study the Commission offered an alarming prediction: “Our nation is moving toward two societies, one black, one white—separate and unequal.”¹² A principal cause of urban violence, the report offered, was white racism. The Commission proposed several ways to ameliorate the situation, including more government programs to provide social services, more diverse and sensitive police forces, and more investment in housing programs to break up residential segregation.¹³

The prediction of an American version of Apartheid was ominous to many, however, and the suggested solutions were threatening, out of reach, or both. If the root cause was really racism, that was incurable over any reasonable length of time, and the issue was uncomfortably an issue redolent with moral blame. If it was housing segregation, then the solution could be prohibitively expensive, and take decades at best to accomplish.

* * *

As I have stated, *The Poor Pay More* had appeared more than two years before the major rioting, in 1963, and it was one of several rather dry, social-scientific efforts to address an important but not necessarily urgent problem. It was not written with a popular audience in mind, and it was not an especially good read.

But the need to understand causes and cures of urban poverty had become a cultural imperative, and thus the book’s arguments drew attention. Its clinical, denatured discussion of urban poverty provided a much more palatable and practical explanation for the riots to the American center than intrinsic white racism or capitalist class oppression. According to Caplovitz, the riots, above all else, reflected a failure to appreciate the importance of consumer finance and the failure to protect consumers.¹⁴

The book reported the results of in-depth structured interviews with 464 families in low-income housing projects in New York City, and it stated its findings as sociological facts rather than policy judgments.¹⁵ It probed the intersection of consumer problems, race,

11. U.S. KERNER COMM’N, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (1968).

12. *Id.*

13. *Id.*

14. See Nan Robertson, *Sociologist Blames Anger at Merchants for Ghetto Violence*, N.Y. TIMES, Oct. 11, 1966, at 39, <https://timesmachine.nytimes.com/timesmachine/1966/10/11/90227845.html?pageNumber=39> [<https://nyti.ms/2znaWxX>].

15. See CAPLOVITZ, *supra* note 2, at 2–4.

and poverty, using the language of empirical social science—and at a time when social scientific studies were broadly respected.

Caplovitz discovered that poor families consumed high-cost durable goods, and paid higher prices for them than others, and yet, despite their cost, they were often shoddy.¹⁶ He found that they owned expensive items as often as people with higher income levels, even though less expensive ones were available for those who chose to be frugal.¹⁷ They bought in neighborhood stores or from peddlers, instead of at department stores where there was more choice and price variety.¹⁸ The poor bought using credit, but they were unsophisticated about it and ended up paying more for the money they borrowed.¹⁹ Because they were non-white, Caplovitz wrote, they were subjected to discrimination by merchants who charged them more for goods and more for credit.²⁰ Additionally, because their creditworthiness was poor or unestablished, traditional sources of borrowing were closed off, and they were confined to a “deviant” marketing system, in which illegal and unethical selling practices predominated.²¹ They were more often the victims of oppressive debt collections and repossessions.²² They commonly became desperate, and sometimes violent, under their strain.²³

Caplovitz identified a cycle of impoverishment-by-consumption. Because they were young, these poor families had not yet accumulated savings.²⁴ Because they were poor, they were deprived of status, and they were highly susceptible to advertising, which encouraged them to treat nonessential goods as essential compensation for their social position.²⁵ Because they were just beginning their adult lives, they needed consumer durables and were eager to buy TVs, hi-fidelity stereo phonographs, and other objects which were widely advertised as status symbols.²⁶ Because many were newcomers to cities, they were naïve about where to shop.²⁷ Because they were in early stages of the family-life cycle, they had

16. *Id.* at 81.

17. *Id.* at 82–87.

18. *Id.* at 84–86.

19. *Id.* at 87–90.

20. *Id.* at 90–93.

21. *Id.* at 87–90.

22. *Id.* at 157–67.

23. *Id.* at 141, 162.

24. *Id.* at 109–12.

25. *Id.* at 2.

26. *Id.* at 48.

27. *Id.* at 49.

insufficient wage income for purchases, and so required credit.²⁸ Because these families were poor, they were denied credit at reputable institutions while the disreputable credit sources charged excessive rates.²⁹

The circle of impoverished consumers went round and round, generating great dissatisfaction, frustration, misery, and sometimes violence. Poor consumers with meager consumer alternatives made poor choices, which led to unmanageable debts, fewer good purchasing alternatives, and even more extreme poverty and serious legal problems.³⁰ How to break the cycle? Caplovitz recommended consumer education, consumer protection rules, and different sorts of protective legislation.³¹ Consumer credit markets, except for usury laws, were minimally regulated and insufficient.³² New consumer assistance programs were imperative, as face-to-face interaction between consumer credit counselors and poor consumers in neighborhood consumer rights clinics was very important to breaking the cycle of poverty.³³

IV. EXPLAINING URBAN UNREST AS CONSUMER REVOLT

Late in 1966, the House Government Operations Committee invited Caplovitz to testify about his ideas, which the *New York Times* reported prominently.³⁴ “Sociologist Blames Anger at Merchants for Ghetto Violence,” it reported.³⁵ “Ghetto violence in Watts, Harlem and elsewhere was motivated by anger at merchants who bilk the poor, a Columbia University professor told Congress.”³⁶ Caplovitz, along with a National Crime Commission Report, asserted that the episodes of ghetto violence were “consumer revolts” that could be addressed by more aggressive actions by Federal agencies to “protect the American consumer.”³⁷

The solid logic of his theory, its grounding in data, and its compatibility with liberal, progressive thinking made the arguments compelling. For many middle-class, white Americans, this approach

28. *Id.* at 94.

29. *Id.* at 99–100.

30. *Id.* at 116–17.

31. *See generally* Hilda Siff, Book Note, 2 WELFARE IN REV. 29 (1964).

32. *See* CAPLOVITZ, *supra* note 2, at 188–92.

33. *See generally* Siff, *supra* note 31.

34. *See* Robertson, *supra* note 14, at 39.

35. *Id.*

36. *Id.*

37. *Id.*

had virtues: the causes of urban unrest could be addressed through liberal consumer reforms alone. Because everyone in the white middle-class community had also experienced economic mistreatment at one time or another at the hands of sellers, viewing the rioting as an outgrowth of that mistreatment was more understandable and less threatening than viewing the rioting as race or capitalism-based.

During the late 1960s, Caplovitz probed more deeply into the legal disadvantages associated with being a poor consumer.³⁸ He called for reconsideration of basic contract law doctrine and urged government agencies and those trained in law to reexamine traditional concepts and systems.³⁹ Freedom of contract, he said, had come into question because “inequality in understanding and bargaining power can yield bargains that the courts cannot in good conscience enforce. Even the venerable status of the so-called ‘holder in due course’ . . . who takes a negotiable note innocently by endorsement and is freed of defenses” needed to be re-thought in light of the behavior of “unscrupulous merchants and cooperating finance companies.”⁴⁰ New laws, he wrote, should be created to regulate installment sales and door-to-door sales.⁴¹

Thoughtful readers were inspired to suggest reforms of their own. One reader urged law students to “volunteer their services to help supply manpower needs” to the Caplovitz’s proposed “clinics.”⁴² An attorney in the New York Consumer Frauds Bureau elaborated on Caplovitz’s observation that the law’s “image of the consumer is incorrect since it is based on a model of a ‘sophisticated’ buyer whereas unsophisticated ones deserved protection for their reasonable consumer expectations.”⁴³

The Poor Pay More stimulated many of the consumer protection reforms that characterized the brilliant law reform efforts of the late 1960s and early 1970s. Law students, for instance, will surely have studied the *Williams v. Walker-Thomas Furniture* case, decided by Judge Skelly Wright, in their first-year contracts class.⁴⁴ That case,

38. See generally, e.g., David Caplovitz, *Consumer Credit in the Affluent Society*, 33 LAW & CONTEMP. PROBS. 641 (1968).

39. *Id.* at 653–55.

40. *Id.* at 648–49.

41. *Id.* at 652–53.

42. Stephen Mindell, Book Review, 10 N.Y. L.F. 288, 289 (1964); see also DAVID CAPLOVITZ, NAT’L OP. RESEARCH CTR., UNIV. OF CHI., CONSUMER PROBLEMS OF THE LOW-INCOME 76, 85 (1964), http://www.consumerinterests.org/assets/docs/CIA/CIA1964/1964_caplovitz.pdf [<http://perma.cc/BJ7G-Q9LE>].

43. See Mindell, *supra* note 42, at 290.

44. *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965).

which held that a furniture store's contractual cross-collateralization provision could be considered unconscionable, was decided in 1965. It is likely that Judge Wright had read the hardcover volume at the time he recognized the sales practice in question as a form of oppression of low-income consumers by low-income retailers.⁴⁵

CONCLUSION

In recent decades, the basic arguments made by Caplovitz have, with depressing frequency, been validated.⁴⁶ There are far too many examples to list. I will only mention two: one I consider tragic and one that is in itself somewhat trivial and comic.

A study of the treatment of consumers by credit card issuers in the wake of hurricane Katrina, in 2009 found—tragically, I think—that magnanimity toward victims varied depending on their affluence.⁴⁷ Despite the most catastrophic of circumstances affecting their customers, most credit card issuers started insisting on repayment of non-premium credit card balances, charging over-the-limit fees, and reporting damaging information to credit agencies just three months after the storm.⁴⁸ Thousands of consumer bankruptcies and uncalculated additional interest charges resulted.⁴⁹ On the other hand, beginning immediately after the hurricane, holders of the BellSouth Platinum MasterCard and the BellSouth Platinum Business MasterCard were directly transferred to specially trained Chase customer service teams and were afforded emergency credit line increases, removal of minimum payment requirements, courtesy fee waivers, overnight emergency card replacements, and other

45. See Anne Fleming, *The Rise and Fall of Unconscionability as the “Law of the Poor,”* 102 GEO. L.J. 1383, 1399 (2014); see also J. Skelly Wright, *The Courts Have Failed the Poor*, N.Y. TIMES MAG., Mar. 9, 1969, at 26, <https://timesmachine.nytimes.com/timesmachine/1969/03/09/90061728.html?pageNumber=347> [<https://nyti.ms/2zpKKCI>].

46. See generally, e.g., DONALD HIRSCH, CONSUMER FUTURES, ADDRESSING THE POVERTY PREMIUM: APPROACHES TO REGULATION (2013); Howard Jacob Karger, *The “Poverty Tax” and America’s Low-Income Households*, 88 FAMS. SOC’Y: J. CONTEMP. SOC. SERVS. 413 (2007) (recognizing that although low-income U.S. households account for more than \$650 billion a year in buying power, they still pay more for basic goods and services than high-income households).

47. See Norman I. Silber, *Thriving on Adversity: Corporate Treatment and Mistreatment of Consumers in the Wake of Hurricane Katrina*, 22 LOY. CONSUMER L. REV. 139, 147 (2009); see also Norman I. Silber, *Debts, Disasters, and Delinquencies: A Case for Placing a Mandatory Force Majeure Provision into Consumer Credit Agreements*, 34 N.Y. REV. L. & SOC. CHANGE 760, 761 (2010).

48. See Silber, *Thriving on Adversity*, *supra* note 47, at 147–48.

49. *Id.* at 149–50.

privileges.⁵⁰ Preferred MasterCard holders could defer payments and receive waivers of late and over-limit fees.⁵¹ None of their accounts would be reported to credit bureaus as delinquent.⁵² These privileges were not conferred upon all of Chase's customers.⁵³

Comical, but offering an insight into more disturbing phenomena, is the story told recently on a *Washington Post* blog about two investigators at the University of Michigan who established, rigorously, that the poor even pay more for toilet paper.⁵⁴ With a data base of 100,000 American households over seven years, they tracked nearly 3 million toilet paper purchases and found that the poor were less likely than wealthier households to buy bigger packages, or to time their purchases to take advantage of sales.⁵⁵ By failing to do so, they paid about 5.9% more per sheet of toilet paper, a little less than what they saved by buying cheaper brands in the first place (8.8%).⁵⁶

* * *

The contributors to this Symposium Issue of the *Fordham Urban Law Journal* carry forward the inquiry into the necessity for better understanding the role of consumer law in the perpetuation of poverty, injustice, and social disorder. In the United States, and all over the world, social scientists and lawyers continue to confirm that the poor too often do pay more.

50. *Id.* at 168–69.

51. *Id.* at 169.

52. *Id.*

53. *Id.*

54. Emily Badger, *Why the Poor Pay More for Toilet Paper—And Just About Everything Else*, WASH. POST: WONKBLOG (Mar. 8, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/03/08/why-the-poor-pay-more-for-toilet-paper-and-just-about-everything-else> [<https://perma.cc/V8DA-8HRU>].

55. *Id.*

56. *Id.*