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# O Brother Where Art Thou? The Struggles of African American Men in the Global Economy of the Information Age

Kenneth Glenn Dau-Schmidt, JD, PhD\*

## INTRODUCTION

In the late 1980s, William Wilson first argued that widespread economic transitions had altered the socioeconomic structure of American inner cities to the detriment of African Americans.<sup>1</sup> Wilson identified declines in manufacturing work and its replacement with poorly compensated service-sector work as driving racial segregation and leaving African Americans jobless, poor, and alienated from American society.<sup>2</sup> These transitions were particularly problematic for African American men because manufacturing work was their primary gateway to middle-class employment, while African American women had already focused more on service work.<sup>3</sup>

Since the initial exposition of Wilson's theory of deindustrialization, Wilson's framework of transition, disadvantage, and alienation has proven true with a vengeance for working-class African American men. The decline in manufacturing jobs since the 1980s has left African American men without their traditional gateway to the middle-class and has accelerated the decline of American unions that benefited those men.<sup>4</sup> As the economy transitioned from manufacturing to service jobs, African American men's disadvantages in education have left them at a loss in competing for the high-wage jobs that remain.<sup>5</sup> At the same time that deindustrialization was sweeping the U.S. economy, the nation also waged a "War on Drugs," largely at the expense of the same inner-city African American men who then suffered high rates of imprisonment with long mandatory sentences even for

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\* Willard and Margaret Carr Professor of Labor and Employment Law, Indiana University – Bloomington, Maurer School of Law, kdauschm@indiana.edu. I would like to dedicate this article to the proud African American men I have been honored to call my good friends: Steve Braunginn, Paul Higginbotham, Earl Singleton, Kevin Brown, Frank Motley, and Tim Lovelace.

<sup>1</sup> See WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY*, vii–xi (1987) [hereinafter WILSON, *THE TRULY DISADVANTAGED*]; WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* (Alfred A. Knopf ed., 1996) [hereinafter WILSON, *WHEN WORK DISAPPEARS*].

<sup>2</sup> See WILSON, *THE TRULY DISADVANTAGED*, *supra* note 1, at 39–46, 100–104; WILSON, *WHEN WORK DISAPPEARS*, *supra* note 1, at 29–31, 142, 144.

<sup>3</sup> See WILSON, *WHEN WORK DISAPPEARS*, *supra* note 1, at 95–97, 105.

<sup>4</sup> KENNETH G. DAU-SCHMIDT, MARTIN H. MALIN, ROBERTO L. CORRADA, CHRISTOPHER DAVID RUIZ CAMERON & CATHERINE L. FISK, *LABOR LAW IN THE CONTEMPORARY WORKPLACE* 91, 93, 98 (3d ed. 2019); Michael B. Katz, Mark J. Stern & Jamie T. Fader, *The New African American Inequality*, 92 *J. AM. HIST.* 75, 85–89 (2005).

<sup>5</sup> Katz et al., *supra* note 4, at 94.

nonviolent offenses.<sup>6</sup> These high rates of imprisonment removed African American men from their communities and left them at a serious disadvantage in an increasingly competitive low-skilled labor market.

As their prospects for employment declined, African American men became increasingly alienated from the labor market and the family. Although the labor force participation rate has declined for all men, it has declined much more steeply for Black men.<sup>7</sup> Indeed, African Americans have become the first racial or ethnic group for which the male labor force participation rate is below that of the women.<sup>8</sup> As Black men's fortunes in the labor market declined, so too did their prospects for marriage and childrearing.<sup>9</sup> Steady employment remains men's key to marriage and child-rearing, and, increasingly, women have decided it is better to have children outside of marriage.<sup>10</sup> As a result, the man's only participation in child-rearing is often as the subject of child support claims, which can also result in imprisonment for non-payment.<sup>11</sup>

Although these deleterious transitions have had an impact across the working class, their impact has been particularly hard on African American male workers. This is because of African American men's high reliance on manufacturing jobs, their greater disadvantages in education, and their much harsher treatment under our criminal justice system. This Article will outline the current problems for African American men in the global economy of the information age.

## I. THE DECLINE IN MANUFACTURING EMPLOYMENT IN THE UNITED STATES

Beginning in at least 1980, the American economy suffered a substantial decline in manufacturing jobs that has continued to this day.<sup>12</sup> This decline is due both to the outsourcing of these jobs to low-wage workers overseas and the disappearance of these jobs through automation.<sup>13</sup> New information technology allows for horizontal organization of firms across the globe, with manufacturing production outsourced to low-wage workers in Asia and particularly China.<sup>14</sup> It is

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<sup>6</sup> See Nekima Levy-Pounds, *Going up in Smoke: The Impacts of the Drug War on Young Black Men*, 6 ALB. GOV'T L. REV. 563, 564 (2013); *infra* Table 5, Graph 5.

<sup>7</sup> See *infra* Table 6A, Graph 6.

<sup>8</sup> See *infra* Table 6A, Graph 6.

<sup>9</sup> See *infra* Table 7, Graph 7A.

<sup>10</sup> See JUNE CARBONE & NAOMI CAHN, MARRIAGE MARKETS: HOW INEQUALITY IS REMAKING THE AMERICAN FAMILY 133–140 (2014) [hereinafter MARRIAGE MARKETS] (discussing the steadily eroding “marital presumption” in motherhood); Wendy Wang & Kim Parker, *Record Share of Americans Have Never Married*, PEW RES. CTR. (Sept. 24, 2014), <https://www.pewsocialtrends.org/2014/09/24/record-share-of-americans-have-never-married/>; *infra* Table 7, Graph 7A.

<sup>11</sup> See *infra* Graph 7C, and accompanying text; Tonya L. Brito, *Fathers Behind Bars: Rethinking Child Support Policy Toward Low-Income Noncustodial Fathers and Their Families*, 15 J. GENDER RACE & JUST. 617, 652 (2012).

<sup>12</sup> See *infra* Table 1; Graph 1A.

<sup>13</sup> DAU-SCHMIDT ET AL., *supra* note 4, at 90–98.

<sup>14</sup> See PETER CAPPELLI, THE NEW DEAL AT WORK 5 (1999); Kenneth G. Dau-Schmidt, *Employment in the New Age of Trade and Technology: Implications for Labor and Employment Law*, 76 IND. L.J. 1, 1–2 (2001).

estimated that trade with China alone accounts for the loss of as many as 3.2 million American jobs since 2001.<sup>15</sup> More recently, the new information technology has allowed the automation of many jobs, resulting disproportionately in the destruction of mid-skill jobs that allowed working class Americans entry into the middle class.<sup>16</sup> This trend in the technological obsolescence of many mid-skill, middle-class jobs is projected to continue with as many as 47% of American jobs subject to computerization.<sup>17</sup>

As a result of these changes, the manufacturing sector has declined substantially in the United States. Between 1970 and 2016, the number of manufacturing jobs in the United States declined from almost 18 million to just over 12 million.<sup>18</sup> The number of manufacturing jobs declined precipitously after 2000, when China received most-favored nation status, dropping almost 5 million jobs in just eight years.<sup>19</sup> Over the same period from 1970 to 2019, the percentage of American workers employed in manufacturing decreased from 25.2% to 8.5%.<sup>20</sup> Although important manufacturing still occurs in the United States, as a share of total employment it has become a much less important sector of the U.S. economy.

	Manufacturing Employment	Total Employment	Percentage Employed in Manufacturing
1970	17.93	71.029	25.24
1975	16.69	76.521	21.81
1980	18.49	90.101	20.52
1985	17.819	97.459	18.28
1990	17.776	109.857	16.18
1995	17.247	117.293	14.70
2000	17.296	132.079	13.10
2005	14.227	133.957	10.62
2010	11.545	130.530	8.84
2015	12.338	141.727	8.70
2019	12.846	151.252	8.49

Source: Bureau of Labor Statistics, <https://data.bls.gov/pdq/SurveyOutputServlet>.

<sup>15</sup> Robert E. Scott & Will Kimball, *China Trade, Outsourcing and Jobs*, ECON. POL'Y INST. (Dec. 11, 2014), <https://www.epi.org/publication/china-trade-outsourcing-and-jobs/>.

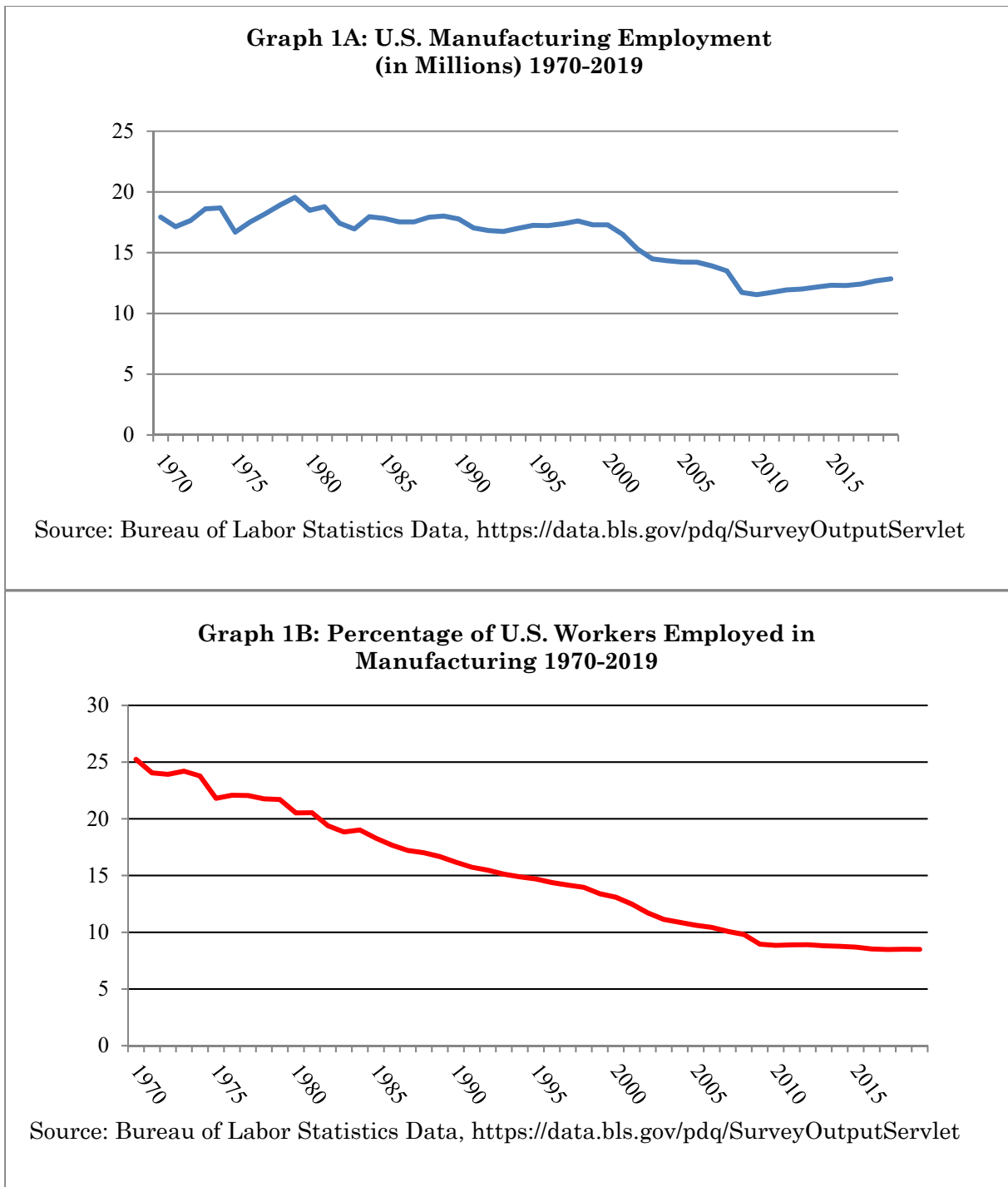
<sup>16</sup> ERIK BRYNJOLFSSON & ANDREW MCAFEE, RACE AGAINST THE MACHINE: HOW THE DIGITAL REVOLUTION IS ACCELERATING INNOVATION, DRIVING PRODUCTIVITY, AND IRREVERSIBLY TRANSFORMING EMPLOYMENT AND THE ECONOMY 50 (2011); Kenneth G. Dau-Schmidt, *Labor Law 2.0: The Impact of New Information Technology on the Employment Relationship and the Relevance of the NLRA*, 64 EMORY L.J. 1583, 1591–92 (2015).

<sup>17</sup> CARL BENEDIKT FREY & MICHAEL A. OSBORNE, THE FUTURE OF EMPLOYMENT: HOW SUSCEPTIBLE ARE JOBS TO COMPUTERISATION? 1 (2013).

<sup>18</sup> See *infra* Table 1.

<sup>19</sup> See David H. Autor, David Dorn & Gordon H. Hanson, *The China Shock: Learning from Labor-Market Adjustment to Large Changes in Trade*, 8 ANN. REV. ECON. 205, 240 (2016).

<sup>20</sup> See *infra* Graph 1; see also Martin Neil Baily & Barry P. Bosworth, *U.S. Manufacturing: Understanding Its Past and Its Potential Future*, 28 J. ECON. PERSP. 3, (2014); Justin R. Pierce & Peter K. Schott, *The Surprisingly Swift Decline of U.S. Manufacturing Employment 2* (Nat'l Bureau of Econ. Research, Working Paper No. 18655, 2012).



This decline in manufacturing jobs has been disproportionately borne by African American men. During the “Great Migration” from 1910 to 1970, as more than six million African Americans migrated from the rural south to the urban north and west, African American women tended to move into service work, while

African American men tended to move into manufacturing.<sup>21</sup> Women moved from domestic-service work to other service work, especially in the public sector, but African American men remained disproportionately engaged in manufacturing work in the large urban areas.<sup>22</sup> This can be seen in Levine's analysis of African American men in Milwaukee and other large urban areas. He found that in 1970, 54.3% of employed Black men in Milwaukee held production jobs while only 23.2% of White men in the area held such jobs.<sup>23</sup> As those jobs disappeared, the loss was felt disproportionately by African American men. In 2009, only 14.7% of employed Black men in Milwaukee held production jobs, while 13% of their White counterparts continued to hold such jobs.<sup>24</sup> There is also evidence that increased immigration displaced some low-skilled African American males from this work during this time.<sup>25</sup> The disappearance of these manufacturing jobs has been identified as a substantial contributing factor to the depression-level rates of unemployment suffered by African American men for most of the last forty years.<sup>26</sup> In twenty-four of the last forty-two years since 1974, African American men have suffered unemployment rates in excess of 11.4%, the peak rate of unemployment for the general population during that period.<sup>27</sup>

**Table 2: Percentage of Employed Males Holding Production Jobs: By Race, Metropolitan Milwaukee, 1970–2009**

	Black	White	Hispanic
1970	54.3	23.2	46.7
2000	20.4	14.7	31.2
2007-09	14.7	13.0	23.4

Source: Levine, *supra* note 23, at 10.

<sup>21</sup> See generally Katz et al., *supra* note 4, at 75, 85–89.

<sup>22</sup> *Id.*

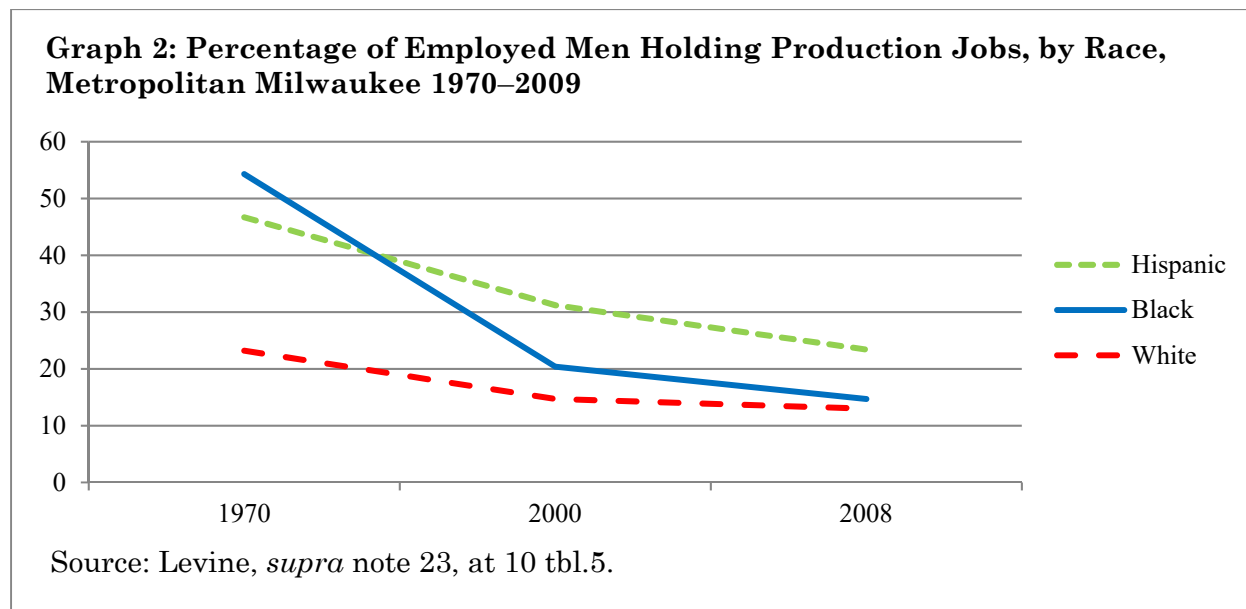
<sup>23</sup> See Mark V. Levine, Race and Male Employment in the Wake of the Great Recession: Black Male Employment Rates in Milwaukee and the Nation's Largest Metro Areas 10 tbl.5 (UW-Milw. Ctr. for Econ. Dev., Working Paper, 2012), [https://dc.uwm.edu/cgi/viewcontent.cgi?article=1019&context=ced\\_pubs](https://dc.uwm.edu/cgi/viewcontent.cgi?article=1019&context=ced_pubs).

<sup>24</sup> See *infra* Table 2, Graph 2.

<sup>25</sup> See George J. Borjas, Jeffrey Grogger & Gordon H. Hanson, *Immigration and African American Employment Opportunities: The Response of Wages, Employment, and Incarceration to Labor Supply Shocks* 4 (Nat'l Bureau of Econ. Res., Working Paper No. 12518, 2006).

<sup>26</sup> See generally GERALD D. TAYLOR, ALL FOR AM. MFG., UNMADE IN AMERICA: INDUSTRIAL FLIGHT AND THE DECLINE OF BLACK COMMUNITIES (2016), <http://s3-us-west-2.amazonaws.com/aamweb/uploads/research-pdf/UnmadeInAmerica.pdf>; Katz et al., *supra* note 4, at 85–89 (2005); Eric D. Gould, *Torn Apart? The Impact of Manufacturing Employment Decline on Black and White Americans* (IZA Inst. Lab. Econ. Discussion Paper No. 11614, 2018), <http://ftp.iza.org/dp11614.pdf>.

<sup>27</sup> See Chris Walker, *The Financial Crisis Hurt America, but One Group Has Had It Worse for a Long Time*, MIC (June 23, 2014), <https://mic.com/articles/91685/the-financial-crisis-hurt-america-but-one-group-has-had-it-worse-for-a-long-time#.ZtXqc59oO>.



The decline in American manufacturing has also hurt African American men because it undermined American labor unions. Although many American unions have a history of discrimination against Black people, during the post-war period, African Americans embraced the labor movement and enjoyed disproportionate representation in that movement.<sup>28</sup> This was both because African Americans sought jobs in heavily organized areas such as manufacturing and the public sector and because African Americans tend to be more pro-union than their White counterparts.<sup>29</sup> As a result, from 1983 to the present, African American workers have joined unions in higher proportion than either their White or Hispanic counterparts.<sup>30</sup> For example, in 1983, 36% of employed African American men were union members or covered by a union contract, while only 27% of White or Hispanic men were so covered.<sup>31</sup> As American unions declined with the retreat of American manufacturing, the deterioration in union wages and job opportunities was felt disproportionately by African American males.<sup>32</sup> Between 1983 and 2007, the share of employed African American men who were members of a union or covered by a union contract declined from 36% to 17.2%, while the share of employed White men who were members of a union or covered by a union contract declined from 27% to 14.6%.<sup>33</sup>

<sup>28</sup> DAU-SCHMIDT ET AL., *supra* note 4, at 100–01.

<sup>29</sup> See RICHARD B. FREEMAN & JOEL ROGERS, WHAT WORKERS WANT 99 (updated ed. 2006).

<sup>30</sup> See JOHN SCHMITT & BEN ZIPPERER, CTR. FOR ECON. & POLICY RESEARCH, THE DECLINE IN AFRICAN AMERICAN REPRESENTATION IN UNIONS AND MANUFACTURING, 1979–2007, at 2, 5 tbl.1A (2008), [http://cepr.net/documents/publications/unions\\_aa\\_2008\\_02.pdf](http://cepr.net/documents/publications/unions_aa_2008_02.pdf).

<sup>31</sup> See *infra* Table 3.

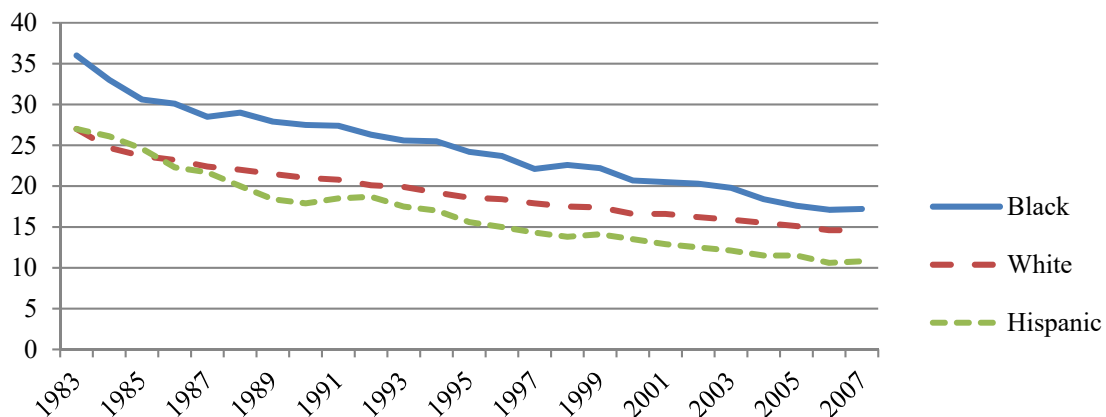
<sup>32</sup> JOHN SCHMITT, CTR. FOR ECON. & POLICY RESEARCH, UNIONS AND UPWARD MOBILITY FOR AFRICAN AMERICAN WORKERS 1 (Apr. 2008), [http://cepr.net/documents/publications/unions\\_2008\\_04.pdf](http://cepr.net/documents/publications/unions_2008_04.pdf).

<sup>33</sup> See *infra* Table 3.

**Table 3: Percentage of Employed Men in Unions or Covered by Union Contracts, by Race or Ethnicity, 1983–2007 (Percent)**

	Black	White	Hispanic	Overall
1983	36	27	27	27.7
1987	28.5	22.4	21.7	22.9
1991	27.4	20.8	18.5	21.3
1995	24.2	18.6	15.6	18.8
1999	22.2	17.4	14.1	17.4
2003	19.8	15.9	12.1	15.6
2007	17.2	14.6	10.8	14.1

Source: SCHMITT, *supra* note 30, at tbl.1C.

**Graph 3: Percentage of Employed Males in Unions or Covered by Union Contracts, by Race or Ethnicity, 1983–2007 (Percent)**

Source: SCHMITT & ZIPPERER, *supra* note 30.

## II. THE DISADVANTAGES FOR AFRICAN AMERICAN MALES IN EDUCATION

At the same time that employment in the American economy has shifted from manufacturing to service work, African American males have suffered disadvantages in education that hamper their ability to adjust to this change and gain access to high-paying service jobs.<sup>34</sup> A variety of reasons have been cited as to why men are not getting the same access to higher education as women. These reasons include social pressure on men to enter the labor force sooner; the decline of male presence in the family; increased female dominance of teaching and administration in primary education; the application of female standards for intelligence and success in education; the rise of “zero tolerance” rules in school

<sup>34</sup> Katz et al., *supra* note 4, at 94.



administration; and the increase in the incarceration rate.<sup>35</sup> The problem of access to education affects African American men even more than White men. Since at least the 1940s, African American men have been at a disadvantage in education both relative to White men and women and relative to Black women.<sup>36</sup>

Since 1940, both African Americans and Whites have significantly increased their high school and college graduation rates, but African Americans increased their graduation rates more rapidly, narrowing the gap with White students. As shown in Table 4 and Graph 4A, from 1960 to 2010, African American men increased their high school graduation rate from 32.2% to 85.0%, while White men increased their high school graduation rate from 62.3% to 89.3%. Over the same period, African American women increased their high school graduation rate from 36.3% to 90.3%, while White women increased their high school graduation rate from 64.5% to 91.8%.<sup>37</sup> Similarly, as shown in Table 4 and Graph 4B, from 1960 until 2010, African American men increased their college graduation rate from 3.0% to 14.7% while White men increased their college graduation rate from 16.5% to 28.7%. African American women increased their college graduation rate from 4.4% to 22.3%, while White women increased their college graduation rate from 8.3% to 37.6%.<sup>38</sup> Even though they improved their educational attainment over this period, by 2010, Black men's college graduation rate was only 51.2% that of White men's college graduation rate, 65.9% that of Black women's graduation rate and 39.1% that of White women's graduation rate.<sup>39</sup>

Year	Male				Female			
	% Black		% White		% Black		% White	
	HS	Col	HS	Col	HS	Col	HS	Col
1960	32.2	3.0	62.3	16.5	36.3	4.4	64.5	8.3
1970	52.8	5.0	75.9	20.8	54.9	6.2	74.5	12.9
1980	74.4	10.9	86.1	26.5	76.8	12.3	86.4	22.2
1990	82.9	11.0	86.7	23.4	85.8	12.8	89.2	23.5
2000	85.2	12.3	89.2	28.8	89.0	17.4	92.0	33.0
2010	85.0	14.7	89.3	28.7	90.3	22.3	91.8	37.6

Sources: U.S. Census; Michael B. Katz et al., *supra* note 4; Integrated Public Use Microdata Series, <http://usa.ipums.org/usa/> (last visited Sept. 22, 2019).

<sup>35</sup> See Claudia Buchmann & Thomas A. DiPrete, *The Growing Female Advantage in College Completion: The Role of Family Background and Academic Achievement*, 71 AM. SOC. REV. 515, 534 (2006); Thomas S. Dee, *A Teacher Like Me: Does Race, Ethnicity, or Gender Matter?*, 95 AM. ECON. REV. 158, 162–63 (2005); Thomas S. Dee, *The Why Chromosome*, EDUC. NEXT, Fall 2006, at 69, 75.

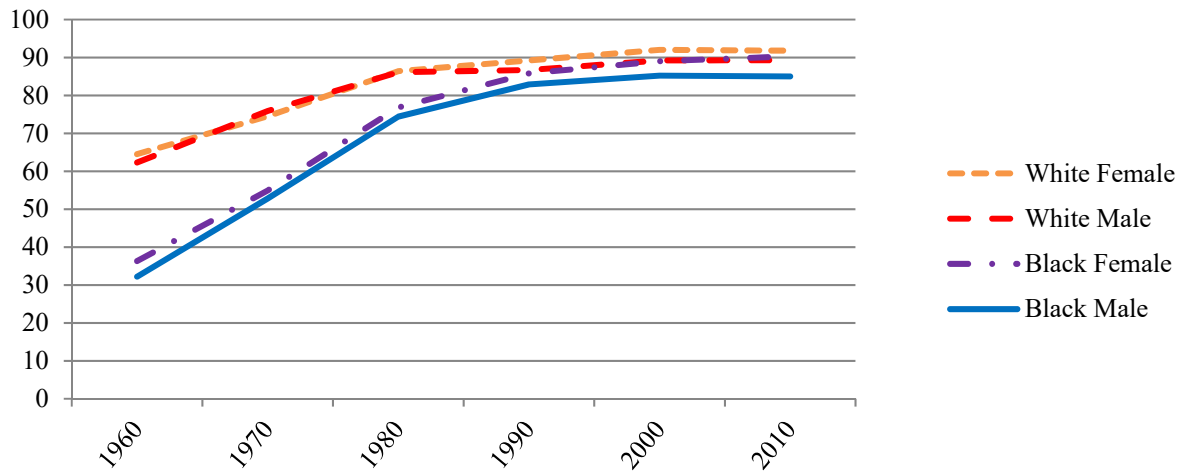
<sup>36</sup> See Katz et al., *supra* note 4, at 93–94.

<sup>37</sup> See *infra* Table 4, Graph 4A.

<sup>38</sup> See *infra* Table 4, Graph 4B.

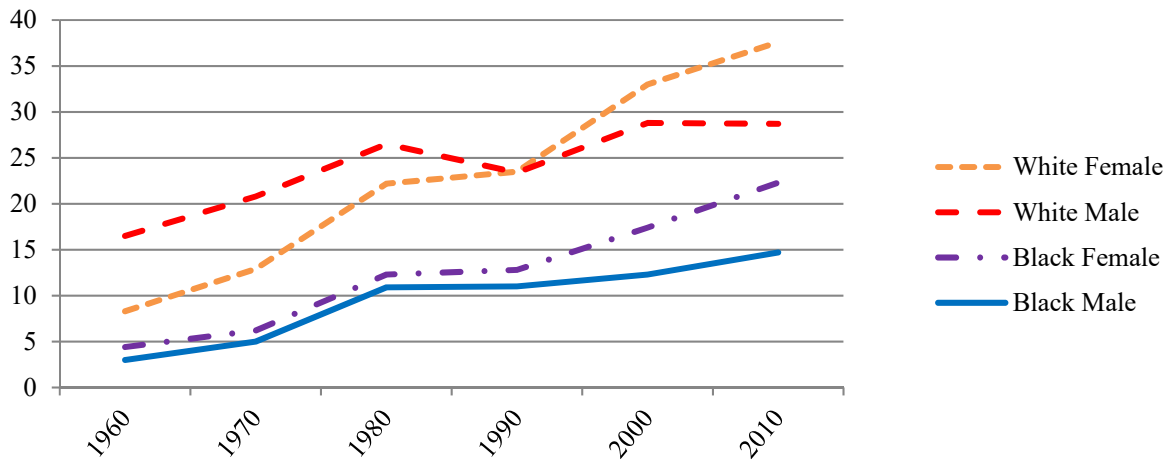
<sup>39</sup> See *infra* Table 4, Graph 4B.

**Graph 4A: High School Graduation Rates, Percent of African Americans and Whites, Ages 26–30, 1960–2010**



Sources: U.S. Census; Michael B. Katz et al., *supra* note 4.

**Graph 4B: College Graduation Rates, Percent of African Americans and Whites, Ages 26–30, 1960–2010**



Sources: U.S. Census; Michael B. Katz et al., *supra* note 4.

### III. THE WAR ON DRUGS, OVERCRIMINALIZATION, AND THE HYPER-INCARCERATION OF AFRICAN AMERICAN MALES

At the same time that African American men were suffering decreased job prospects due to deindustrialization, they became subject to an increased danger of incarceration as American society decided to “get tough on crime.” In the mid-to-late 1980s, Americans became concerned with increasing crime rates and in particular with the rise in crack cocaine use in inner-city communities.<sup>40</sup> “Following the untimely death of basketball star Len Bias from a cocaine overdose, Congress declared the ‘war on drugs’ and passed laws establishing lengthy mandatory-minimum sentences, demonstrating its resolve to ‘get tough on crime’ and reduce drug trafficking in the United States.”<sup>41</sup> However, the movement to increase criminal penalties and the use of criminal law to regulate human behavior was not confined just to inner-city drug sales but spread to a wide variety of human behavior, including the increase use of incarceration against men in domestic disputes and for the late payment of child support.<sup>42</sup> As the percentage of Americans incarcerated grew to be many times larger than that of other democracies, scholars began to argue that the United States suffers from a problem of “overcriminalization.”<sup>43</sup> Of course, the impact of this increased use of the criminal law and more burdensome criminal sentences fell disproportionately on African-American men.<sup>44</sup>

Since 1980, African American men have suffered incarceration rates more than 6 times higher than that of White men, 17 to 27 times that of African American women, and 65 to 191 times that of White women.<sup>45</sup> All of these demographic groups suffered increases in the rate of imprisonment over this period and the Black male incarceration rate holds roughly proportional to the White male rate during this time. However, the incarceration rate for African American males is so much higher than the other groups that when incarceration really took off in 1990 and 2000, it impacted a much larger proportion of African American men.<sup>46</sup> In 2000, a full 3% of the African American male population was in federal or state prison while none of the other examined groups suffered even one-half of one percent of their population being imprisoned.<sup>47</sup> The percentage of African American men imprisoned has reached much higher levels in large urban areas. For example,

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<sup>40</sup> See Nekima Levy-Pounds, *Going Up in Smoke: The Impacts of the Drug War on Young Black Men*, 6 ALB. GOV'T L. REV. 560, 564 (2013).

<sup>41</sup> *Id.* at 567.

<sup>42</sup> See Harry J. Holzer, Paul Offner & Elaine Sorensen, *Declining Employment Among Young Black Less-Educated Men: The Role of Incarceration and Child Support*, 24 J. POL'Y ANALYSIS & MGMT. 329, 330 (2005).

<sup>43</sup> See DOUGLAS HUSAK, OVERCRIMINALIZATION: THE LIMITS OF THE CRIMINAL LAW 5 (2008); Erik Luna, *The Overcriminalization Phenomenon*, 54 AM. U. L. REV. 703, 712 (2005).

<sup>44</sup> See *infra* Table 5.

<sup>45</sup> See *infra* Table 5.

<sup>46</sup> See *infra* Table 5.

<sup>47</sup> See *infra* Table 5.

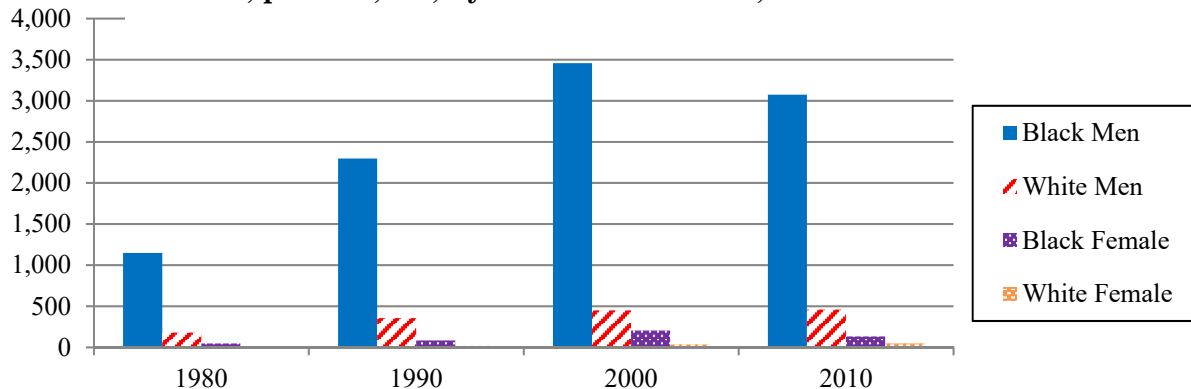
due to high incarceration rates in Milwaukee County, 12.8% of African American men in the state of Wisconsin—where the most extensive studies of this phenomenon have been conducted—were incarcerated in 2010.<sup>48</sup>

**Table 5: Estimated Number of African Americans and Whites in Prison per Hundred Thousand, by Race and Gender, 1950–2010**

	Men			Female		
	Black	White	B/W	Black	White	B/W
1980	1,148	178	6.45	47	6	7.83
1990	2,296	356	6.45	84	18	4.67
2000	3,457	449	7.70	205	34	6.03
2010	3,074	459	6.70	133	47	2.83

Sources: PAUL GUERINO, PAIGE M. HARRISON, & WILLIAM J. SABOL, U.S. DEPT. OF JUST., PRISONERS IN 2010, at 27 app. tbl.14 (2011); BUREAU OF JUST. STAT., U.S. DEPT. OF JUST., PRISONERS IN STATE AND FEDERAL INSTITUTIONS ON DECEMBER 31, at 21 app. 1, tbl.9 (1980); LOUIS W. JANKOWSKI, U.S. DEPT. OF JUST., CORRECTIONAL POPULATIONS IN THE UNITED STATES, 1990, at 84–86 tbls. 5.7, 5.8, & 5.9 (1992).

**Graph 5: Number of People Incarcerated in Federal or State Prison, per 100,000, by Race and Gender, 1980–2010**



Sources: PAUL GUERINO, PAIGE M. HARRISON, & WILLIAM J. SABOL, U.S. DEPT. OF JUST., PRISONERS IN 2010, at 27 tbl. 14 (2011); BUREAU OF JUST. STAT., U.S. DEPT. OF JUST., PRISONERS IN STATE & FEDERAL INSTITUTIONS ON DECEMBER 31, at 21, 1, tbl. 9 (1980); LOUIS W. JANKOWSKI, U.S. DEPT. OF JUST., CORRECTIONAL POPULATIONS IN THE UNITED STATES, 1990, at 8–86 tbls. 5.7–5.9 (1992).

The phenomenon of more and more Black men serving time in prison has a cumulative impact on the Black male population as a whole. In Milwaukee County, more than half of the African American men in their thirties and forties have been

<sup>48</sup> See JOHN PAWASARAT & LOIS M. QUINN, THE UNIV. OF WISC.-MILWAUKEE EMP'T & TRAINING INST, WISCONSIN'S MASS INCARCERATION OF AFRICAN AMERICAN MALES: WORKFORCE CHALLENGES FOR 2013, at 1, 2 (2013).

imprisoned at some time, more than a third for only non-violent offences.<sup>49</sup> Past convictions, even for minor crimes, can pose an enormous obstacle to future employment, especially in a labor market in which the mainstay manufacturing jobs are disappearing.<sup>50</sup> Combined with disproportionately high murder and suicide rates, the hyper-incarceration of Black men has led to the phenomenon of “missing men,” in which a significant portion of the male population is absent from the Black community. For every 100 African American women outside of prison, there are currently only 83 African American men, with a total of 1.5 million men missing nationwide.<sup>51</sup>

#### IV. THE ALIENATION OF AFRICAN AMERICAN MEN FROM SOCIETY

##### A. *The Alienation of African American Men from Employment*

Due to their decreased job prospects and greater chance of imprisonment, many African American men have become detached from the labor market. Indeed, Levine has persuasively argued that, because so many Black men have become alienated from employment, labor market participation data provides a much better picture of the economic status of those men than unemployment data.<sup>52</sup> This is because unemployment data does not count people who are imprisoned or who have stopped looking for work.<sup>53</sup>

Although historically men have enjoyed very high labor force participation rates at percentages in the high-90s, recently both African American and White men have suffered declines in participation, with African American men suffering an earlier and larger decline in labor force participation. As shown in Table 6A and Graph 6, both African American and White men began the first three decades of the twentieth century with almost identical participation rates of about 97%, but during the period 1940–1970, African American men suffered a decline in participation to about 90%. Over the period 1970–2000, African American men suffered an even more pronounced decline in participation to about 72%.<sup>54</sup> White men suffered a slower and milder decline, which only became pronounced after 1980.<sup>55</sup> In 2010, African American men enjoyed a labor force participation rate of 77%, while White men enjoyed a participation rate of 91%.<sup>56</sup> The problems of African American men are even more pronounced in many large urban areas; for example, Levine has shown that the labor force participation rate for Black men in Milwaukee was only

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<sup>49</sup> *Id.* at 1–2.

<sup>50</sup> Bruce Western, *Incarceration, Unemployment, and Inequality*, 21 FOCUS 32, 34–35 (2001).

<sup>51</sup> Justin Wolfers, David Leonhardt & Kevin Quealy, *1.5 Million Missing Black Men*, N.Y. TIMES (Apr. 20, 2015), [http://www.nytimes.com/interactive/2015/04/20/upshot/missing-black-men.html?\\_r=0](http://www.nytimes.com/interactive/2015/04/20/upshot/missing-black-men.html?_r=0).

<sup>52</sup> Levine, *supra* note 23, at 3–4.

<sup>53</sup> *Id.*

<sup>54</sup> See *infra* Table 6A, Graph 6.

<sup>55</sup> See *infra* Table 6A, Graph 6.

<sup>56</sup> See *infra* Table 6A, Graph 6.

52.7% in 2010, while the labor force participation rate for their White counterparts was 85.1%.<sup>57</sup> Over this same period, African American and White women enjoyed steady increases in labor force participation until in 2010, when Black women's labor force participation (82.5%) exceeded that of Black men's (77%).<sup>58</sup> This decline in labor force participation by African American men has been devastating to their economic prospects, since such participation is a necessary precondition to economic success in the American economy.

**Table 6A: Labor Force Participation of African Americans and Whites Aged 31–40 Years by Gender 1900–2010**

	Males			Females		
	% <i>Black</i>	% <i>White</i>	<i>Black/White</i>	% <i>Black</i>	% <i>White</i>	<i>Black/White</i>
1900	96.8	97.1	1.00	39.0	13.6	2.86
1910	97.7	97.8	1.00	59.2	17.8	3.33
1920	97.0	97.5	1.00	45.8	18.1	2.53
1930	N/A	N/A	N/A	N/A	N/A	N/A
1940	93.4	96.1	0.97	46.5	26.7	1.74
1950	90.8	95.9	0.95	49.0	31.2	1.57
1960	88.8	96.7	0.92	54.2	36.8	1.47
1970	89.5	95.7	0.94	59.9	45.1	1.33
1980	85.6	95.6	0.90	72.1	62.4	1.15
1990	82.0	93.7	0.87	77.5	74.8	1.04
2000	72.5	89.6	0.81	74.9	73.5	1.02
2010	77.0	90.9	0.85	82.5	76.3	1.08

Source: U.S. Census Data, Integrated Public Use Microdata Series, available at: <http://usa.ipums.org/usa/> (last visited Sept. 22, 2019).

**Table 6B: Percentage of Metro Milwaukee Males Ages 25–54 Who Are Employed by Race and Ethnicity**

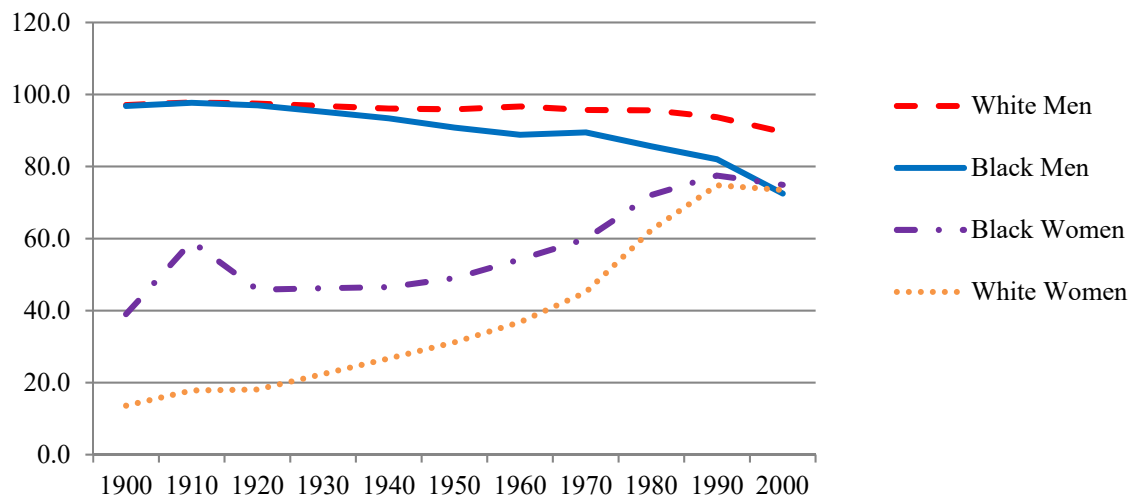
	Black Men	White Men	Hisp Men
1970	84.8	94.5	90.2
1980	74.9	92.3	90.4
1990	64.9	92.1	75.1
2000	61.1	89.7	70.6
2007	56.8	89.6	84.3
2010	52.7	85.1	72.6

Source: Levine, *supra* note 23, at 6 tbl.2; U.S. Bureau of the Census, Census of Population, 1970–2000; American Community Survey, 2007, 2010.

<sup>57</sup> Levine, *supra* note 23, at 6 tbl.2; *see also infra* Table 6B.

<sup>58</sup> *See infra* Table 6A.

**Graph 6: Labor Force Participation of African Americans and Whites Aged 31–40 Years by Race and Gender, 1900–2010**



Sources: U.S. Census; Michael B. Katz et al., *supra* note 4, at 94; Integrated Public Use Microdata Series, available at <http://usa.ipums.org/usa/>.

### *B. The Alienation of African American Men from the Family*

The declining fortunes of African American men in the labor market have also decreased their chances of marrying and raising any children they father. Steady employment has always been, and remains, men's passport to marriage and child-rearing. In a 2014 survey by the Pew Foundation, 78% of single women identified "steady employment" as a "very important" characteristic for a potential spouse more than any other characteristic.<sup>59</sup> Moreover, it seems that "steady employment" is important to more Black women (77%) than White women (59%). Especially for men, marriage is correlated with education and income. Between 1960 and 2012, the percentage of men who have never been married rose from 9% to 25% for men with a high school education or less, but held roughly constant at 14% for men with a post-graduate degree.<sup>60</sup> Similarly, between 1970 and 2011, men in the top 10th percentile of annual earnings saw a modest decrease in the percentage married, from 95% to 83%, while men in the bottom 25th percentile of earnings saw a decline in the percentage married from 86% to 50%.<sup>61</sup> On the question of marriage

<sup>59</sup> WENDY WANG & KIM PARKER, RECORD SHARE OF AMERICANS HAVE NEVER MARRIED AS VALUES, ECONOMICS AND GENDER PATTERNS CHANGE 6 (2004).

<sup>60</sup> *Id.* at 9.

<sup>61</sup> Michael Greenstone & Adam Looney, *The Marriage Gap: The Impact of Economic and Technological Change on Marriage Rates*, BROOKINGS (Feb. 3, 2012), <https://www.brookings.edu/blog/jobs/2012/02/03/the-marriage-gap-the-impact-of-economic-and-technological-change-on-marriage-rates/>.

and child-rearing, a division seems to be developing in American society between the rich and the poor. Although most Americans still see marriage as a good thing, and desirable for child-rearing, lower-income women increasingly see marriage to a man with a steady income as an unattainable goal and have their children out of wedlock.<sup>62</sup>

Because of their disadvantages in education and employment, the decline in marriage and child-rearing has fallen disproportionately on Black men. Although interracial marriage has substantially increased in recent years to 12% of all marriages, and African American men show a higher propensity to marry outside of their race (25%) as compared to African American women (12%), the aggregate data on marriage and unwed motherhood reflects the declining fortunes of African American men in the family.<sup>63</sup> As shown in Table 7 and Graphs 7A and 7B, the percentage of adults who have never been married has risen since 1960 for both Blacks and Whites, but the increase has been much greater for Blacks. Prior to 1960, the percentage of Black men and women who had never married was roughly equal to the corresponding percentage for White adults and ranged from 5% to 12%.<sup>64</sup> However, the percentage of Black men and women who had never married began to diverge from their White counterparts after 1960, and dramatically diverged after 1980, so that now more 25% of Black men and women over thirty-five have never been married.<sup>65</sup> The drop in the Black marriage rate has not been accompanied by a commensurate drop in the Black birth rate as women have decided to bear ever more children out of wedlock.<sup>66</sup> The increase in unwed mothers has occurred predominantly among the poor and less educated.<sup>67</sup> As shown in Graph 7C, the increase in unwed motherhood has been disproportionately borne by African American women, with 72.6% of their children born out of wedlock in 2008, as compared to only 28.6% born out of wedlock to White mothers. For every unwed mother, there is of course a father who is potentially liable for child support and reimbursement of state welfare payments or Medicaid expenses on pain of imprisonment for nonpayment.<sup>68</sup> Although the threat of imprisonment may induce wealthy men to keep up to date with child support payments or reimbursement of the state, recent work suggests that most of the men who are imprisoned for failure

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<sup>62</sup> See June Carbone & Naomi Cahn, *The Gender/Class Divide: Reproduction, Privilege and the Workplace*, 8 FLA. INT'L U. L. REV. 287, 290–95 (2013) [hereinafter Carbone & Cahn, *The Gender/Class Divide*]; MARRIAGE MARKETS, *supra* note 10, AT 2.

<sup>63</sup> Wendy Wang, *Interracial Marriage: Who is 'Marrying Out'?*, PEW RES. CTR. (June 12, 2015), <http://www.pewresearch.org/fact-tank/2015/06/12/interracial-marriage-who-is-marrying-out/>.

<sup>64</sup> See *infra* Table 7, Graph 7A, Graph 7B.

<sup>65</sup> See *infra* Table 7; see also Wang & Parker, *supra* note 10, at 11.

<sup>66</sup> See Wang & Parker, *supra* note 10; MARRIAGE MARKETS, *supra* note 10, at 133–40.

<sup>67</sup> See Carbone & Cahn, *The Gender/Class Divide*, *supra* note 61, at 288, 295.

<sup>68</sup> See, e.g., Ind. Code § 35-46-1-5 (establishing two classes of felony for nonsupport of a child).



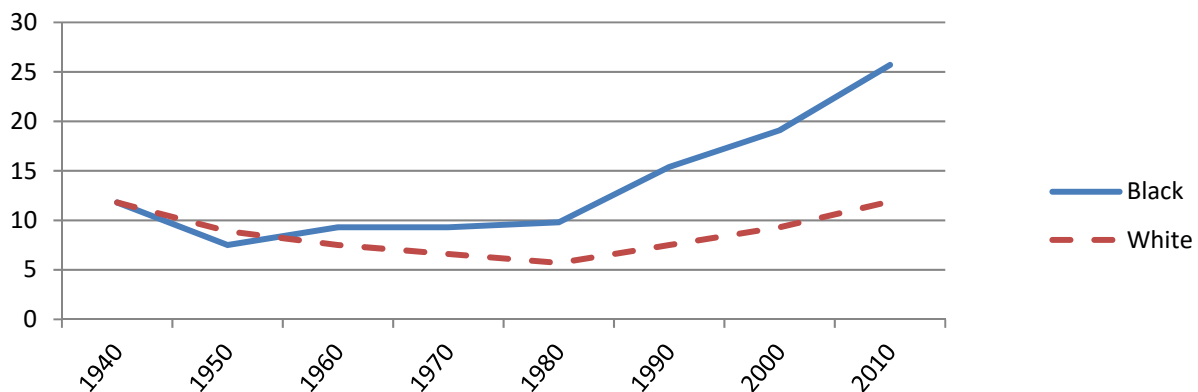
to pay do not in fact have the resources to pay, and imprisonment just causes them to lose whatever employment they may have had.<sup>69</sup>

**Table 7: Percentage of Adults Aged 35 and Older Who Have Never Been Married by Gender and Race, 1940–2010**

	Male		Female	
	Black	White	Black	White
1940	11.8	11.8	6.0	9.8
1950	7.5	8.9	5.1	8.6
1960	9.3	7.5	6.1	7.4
1970	9.3	6.6	7.0	6.5
1980	9.8	5.7	8.4	5.3
1990	15.4	7.5	13.5	5.6
2000	19.1	9.3	19.1	6.5
2010	25.7	11.9	25.1	8.1

Source: *Marriage in Black America*, BLACK DEMOGRAPHICS, <http://blackdemographics.com/households/marriage-in-black-america/> (last visited Mar. 4, 2019); American Community Survey Data (2010).

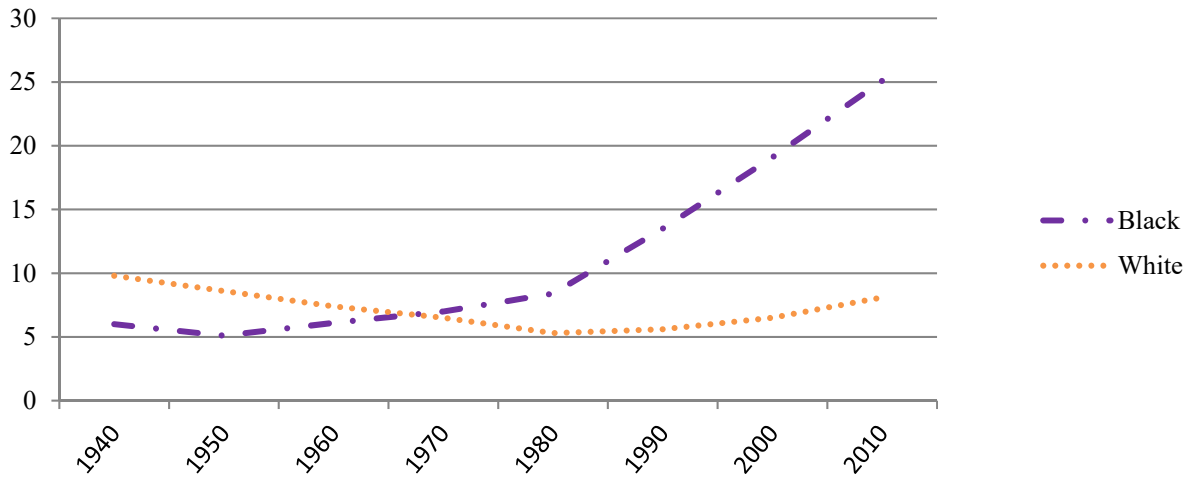
**Graph 7A: Percent Never Married Men Aged 35 and Over by Race, 1940–2010**



Source: *Marriage in Black America*, BLACK DEMOGRAPHICS, <http://blackdemographics.com/households/marriage-in-black-america/> (last visited Mar. 4, 2019); American Community Survey Data (2010).

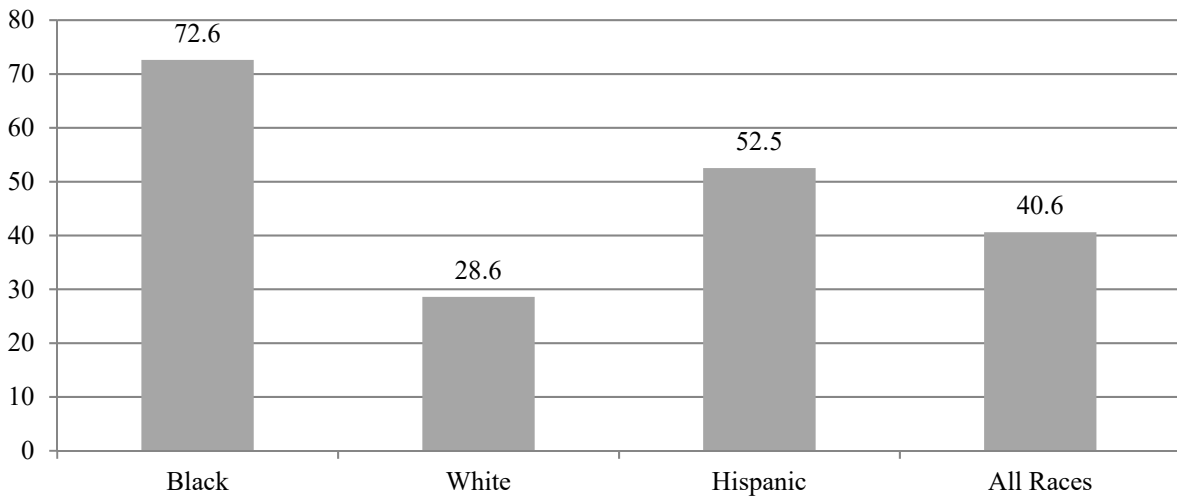
<sup>69</sup> See Tonya L. Brito, *Fathers Behind Bars: Rethinking Child Support Policy Toward Low-Income Noncustodial Fathers and Their Families*, 15 J. GENDER RACE & JUST. 617, 652 (2012); Solangel Maldonado, *Deadbeat or Deadbroke: Redefining Child Support for Poor Fathers*, 39 U.C. DAVIS L. REV. 991, 1014 (2006).

**Graph 7B: Percent Never Married Women Aged 35 and Over by Race, 1940–2010**



Source: *Marriage in Black America*, BLACK DEMOGRAPHICS, <http://blackdemographics.com/households/marriage-in-black-america/> (last visited Mar. 4, 2019); American Community Survey Data (2010).

**Graph 7C: Percent of Births to Unwed Mothers by Race and Ethnicity 2008**



Source: BRADY E. HAMILTON, JOYCE A. MARTIN, & STEPHANIE J. VENTURA, DEP'T OF HEALTH AND HUM. SERV., BIRTHS: PRELIMINARY DATA FOR 2008, at 6 (2010).

## CONCLUSION

African American men have not fared well in the global economy of the information age. Although the American working class as a whole has struggled to adjust to their changing fortunes as American jobs were outsourced overseas, African American men in particular have suffered from these changes because they were heavily invested in the manufacturing jobs and unions that supported American working-class success in the post-war period. Because of their disadvantages in education, African American men were also at a disadvantage in responding to the changed labor market and transitioning to high paying service jobs. At the same time that the American labor market was in flux, America's efforts to "get tough on crime" compounded the problems of African American men as the nation increasingly resorted to imprisonment to regulate drug use and other behaviors and the numbers of Black men imprisoned skyrocketed. Imprisonment not only removed men from the African American community but also aggravated the problems of those men in finding lawful employment.

The disadvantages of African American men in the global economy have left increasing numbers of them alienated from basic human institutions such as work and family. As their fortunes in the labor market declined, so too did the labor force participation rate of Black men. Although all men have suffered declining labor force participation rates of late, the decline in the labor force participation rate of African American men has been particularly pronounced so that now their labor force participation rate is below that of African American women. With declining prospects for steady employment, African American men have also been left out of marriage and child-rearing. Women still highly value steady employment as a characteristic in a prospective spouse, and as steady employment has come to elude more and more African American men, African American women have opted to instead have children outside of marriage.