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Perpetuating Poverty: Exploitative Businesses, the Urban Poor, and the Failure of Liberal Reform

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I. Introduction

In the poor parts of American cities there is always at least one busy intersection with a dozen establishments offering rent-to-own goods, payday loans, or title loans. Individual examples of these establishments can also be found in suburbs and rural areas and even on Indian reservations, but the concentration of these establishments in the center-city is unrivaled. Rent-to-own outlets, payday lenders, and title pawns target the urban poor. Their garish signs, flashing lights, and extended business hours are designed to entice the impoverished people of our center-cities. More fundamentally, rent-to-own outlets, payday lenders, and title pawns rely on refined and time-tested business models developed to ensnare the urban poor in terribly disadvantageous transactions.

How and why do the urban poor succumb to these businesses' oily ways? While the urban poor of course have less money than members of the middle and upper classes, they do have enough money to avail themselves of the rent-to-own outlets, payday lenders, and title pawns. "Poverty" in the United States is relative, and being in poverty does not preclude the acquiring of goods and loans. Furthermore, the urban poor are often especially anxious to acquire these goods and loans and quite willing to spend a large portion of their disposable

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income doing so. The goods and loans are welcome not only in and of themselves but also as symbols of desirable, albeit elusive, lifestyles.

In the end, the urban poor who shop and borrow at rent-to-own outlets, payday lenders, and title pawns do in fact pay exorbitant amounts that are much higher than what they would pay for goods at Walmart or loans at the local bank. As scholars have argued for almost fifty years, it is routinely the case that the poor pay more than middle and upper-class Americans for comparable goods and services.[1] This includes food, housing, transportation, insurance, mortgages, and health care,[2] and it certainly includes goods and loans from rent-to-own outlets, payday lenders, and title pawns.

This article has four major sections. The first three examine the business models of, in order, the rent-to-own outlets, payday lenders, and title pawns. Each of these business models features a highly-crafted, standardized contractual agreement that does not merely support the business but rather is central to it. The fourth section of the article reviews reformist efforts related to these businesses and also argues that these liberal efforts at reform have been ineffective. The business models and concomitant contractual agreements of rent-to-own outlets, payday lenders, and title pawns are so sophisticated and adjustable as to make them virtually impervious to regulation. As a result, rent-to-own outlets, payday lenders, and title pawns continue not only to exploit the urban poor but also to socio-economically subjugate the urban poor by trapping them into a ceaseless debt cycle. A blanket proscription of these tawdry businesses might be the only way to drive them from our midst and to eliminate their active role in the perpetuation of urban poverty.

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[1] *See* DAVID CAPLOVITZ, THE POOR PAY MORE: CONSUMER PRACTICES OF LOW-INCOME FAMILIES (1967); GREGORY D. SQUIRES, WHY THE POOR PAY MORE (2004).

[2] *See* DeNeen L. Brown, *The High Cost of Poverty – Why the Poor Pay More*, WASH. POST; May 18, 2001; C01.

II. Rent-to-Own

The rent-to-own business first surfaced in the United States during the 1960s and then grew rapidly during the 1970s and 1980s as independent "mom and pop" stores and regional outlets gave way to large national chains.[3] Two national chains, Rent-A-Center and Rent-Way, came to own half the rent-to-own stores in the country, and during the 1990s both of those chains doubled in size.[4] In the present, "Rent-A-Center is the nation's largest rent-to-own company."[5] Along with its rent-to-own competitors, Rent-A-Center employs a business model well suited to exploit those members of the urban poor seeking relatively expensive consumer goods, with the ten most commonly acquired goods being, in order, televisions, sofas, washers, VCRs, stereos, beds, dryers, refrigerators, chairs, and dining room tables.[6] Despite sharp criticism of the industry from consumer advocates, the rent-to-own business remains highly successful today.

The rent-to-own business is a resourceful participant and facilitator in the process known in the academic literature by the lumbering term "commodification."[7] The term refers to the way in the context of consumer capitalism things are forever being turned into "commodities." Consumer goods are what first springs to mind, but "commodities" need not necessarily be objects. Commodification can and does take place with services as well as with the news, educational offerings, political positions, and just about anything that can be bought and sold. One scholar has even discussed the adoption of children as a variety of commodification.[8] Commodification is a central process in consumer capitalism, and as sad as it might be, many go

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[3] *See* James M. Lacko, Signe-Mary McKernan & Mary Hastak, *Federal Trade Commission Bureau of Economics Staff Report: Survey of Rent-to-Own Customers* 3 (2000).
[4] *See id.*
[5] Perez v. Rent-A-Center, 892 A. 2d 1255, 1258 (N.J. 2006).
[6] *See* Lacko, McKernan & Hastak, *supra* note 3, at 32
[7] *See* Michael Ralph, *Commodity*, 27 SOCIAL TEXT 78 (2009).
[8] S*ee* David Ray Papke, *Pondering Past Purposes: A Critical History of American Adoption Law*, 102 W. VA. L. REV. 459, 468-70 (1999).

through life thinking of themselves first and foremost as consumers of commodities. To rephrase a familiar saying: I shop, therefore I am.

Full-tilt commodification in the United States reached a mature stage in the 1920s.[9] Advertising of course contributed to the marketing of commodities by highlighting individual commodities' best features and also by calling attention to the many commodities available in the market place. More subtly, advertising, what with its happy faces and cheerful outcomes, promoted "consumption as a way of life."[10]

Modern-day retailers, advertisers, and others assure us that consumer goods will bring us happiness or one sort of another. The right type of car can make us prettier or more virile. Modern cell phones can make us more socially active. Products such as Viagra or Cialis, if the tight little narratives in their ads are to be believed, provide sexual satisfaction for not only users of the products but also the users' partners. More generally, the whole process of commodification – the making and selling of commodities – is held out as the pathway to contentment and a sense of well-being in an unsettling world. A belief in the rewards of commodities has become almost an article of faith in the context of consumer capitalism.

There is some reason to think that the urban poor might be especially desirous of the newest commodities. For starters, their lives are often less fulfilling, and they might as a result be more likely to long for goods that, we have been told, bring contentment and happiness to those who possess them. The urban poor are not without commodities to begin with, but, looking around their streets and cities, they might experience feelings of relative deprivation.[11]

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[9] S*ee* DANIEL HOROWITZ, THE MORALITY OF SPENDING: ATTITUDES TOWARD THE CONSUMER SOCIETY, 1875-1940 135 (1985).

[10] CHRISTOPHER LASCH, THE CULTURE OF NARCISSISM: AMERICAN LIFE IN AN AGE OF DIMINISHING EXPECTATIONS 72 (1978).

[11] Elizabeth Sweet describes "relative deprivation" as "a process of social comparison whereby individuals feel deprived in relative evaluation with another reference group in society." Elizabeth Sweet, S*ymbolic Capital, Consumption, and Health Inequality*, 101 AMER. J. PUBLIC HEALTH 260, 260 (2011).

The acquisition of more commodities through rent-to-own outlets affords a perceived way to close the gap and claim some degree of status.

Then, too, the urban poor as a group rely less on social relations and institutions as the foundation of their identities than do the middle and upper classes. They turn increasingly to what Robert G. Dunn calls "the mediated forms of signification derived from consumer goods, telecommunications, and informational technology" to craft personal identity.[12] Indeed, lacking an abundance of social capital and deprived of rich, supportive organizations and institutions, the urban poor become especially likely to turn to commodities for existential sustenance.

Having realized that the rent-to-own industry might be especially able to profit from this commodity lust, the Federal Trade Commission (FTC) conducted a study of over 12,000 households in hopes of gauging the nature and extent of rent-to-own use. The study found, "Compared to survey respondents who had not used rent-to-own transactions, rent-to-own customers were more likely to be African American, younger, lower income, have children in the household, rent their residence, live in the South, and live in non-suburban areas."[13] Aside from rural southerners, rent-to-own customers, in other words, tend to be the urban poor. From the time the rent-to-own business burst on the scene, scholars have underscored that "many, if not most, rent-to-own customers are low-income, high credit-risk consumers."[14] "Rent-to-own agreements are typically entered into by customers who can neither afford to purchase the goods outright nor obtain credit."[15]

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[12] Robert G. Dunn, *Identity, Commodification, and Consumer Culture*, *in* IDENTITY AND SOCIAL CHANGE 113 (Joseph E. Davis ed., 2000).
[13] Lacko, McKernan & Hastak, *supra* note 3, at 32.
[14] James P. Nehf, *Effective Regulation of Rent-to-Own Contracts*, 52 OHIO ST. L. J. 751, 752 (1991).
[15] Kathleen E. Keest, Jeffrey I. Langer, & Michael F. Day, *Interest Rate Regulation Developments: High-Cost Mortgages, Rent-to-Own Transactions, and Unconscionability*, 50 BUS. LAW. 1081, 1086 (1995).

At the center of rent-to-own is a well-crafted, standardized agreement that controls all features of the transaction. It obligates the customer to make weekly or, in some cases, monthly payments for whatever commodities the customer has selected. The store is likely to deliver the commodities to the customer's home, and the customer then assumes responsibility for maintenance. However under the terms of the agreement, the store remains the owner of the commodities, and the weekly or monthly payments do not yield an ownership interest for the customer. Only if the customer makes all the payments set out in the agreement or manages to ante up a lump sum for some percentage of the remaining payments does the customer come to own the commodities. "The prices paid for these goods, however, may be more than double their retail prices by the time the rent-to-own transaction has concluded."[16]

Many customers fail to make all the payments, and almost none ante up the lump sums necessary to complete the purchase. More typically, customers make their weekly or monthly payments for as long as they can, and one industry representative estimated that 85 percent of the customers actually pay in person at the store.[17] Each visit to the store in effect includes a new decision about whether to continue because, after all, the option always exists to return the commodities and terminate the transaction. Business representatives argue that the "repetitive personal interaction" between store employees and customers "strengthen customer relationships."[18] The same repeat visits present the stores with "a tremendous business opportunity to encourage customers to rent more products."[19] And indeed, getting customers to acquire an ever-growing number of commodities is an important part of the rent-to-own business model. The previously noted FTC study found that the average rent-to-own customer rented 2.5

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[16] Nehf, *supra* note 14, at 752.
[17] *See* Jim Hawkins, *Renting the Good Life*, 49 WM. & MARY L. REV. 2041, 2054.
[18] *Id.* at 2055.
[19] *Id.*

items within the preceding five years.[20] Thirteen percent of the customers, meanwhile, had rented at least four items, and seven percent had rented more than five items.[21]

The stores also benefit from selling or, at least, attempting to sell certain bundled services such as insurance against theft and damage, and the core agreement can be easily supplemented to note this. Then, too, the stores offer a variety of preferred customer options.[22] The urban poor, who are eager to acquire commodities that make them feel better about themselves in the first place, seem to welcome the relatively rare opportunity to be "preferred." Industry representatives report that over half of the customers take a preferred customer option.[23]

Under the basic agreement, the stores also charge a range of fees if the customer does not live up to the original terms. These include late fees, reinstatement fees, and collection fees. The fees can be and are used as a threat for the customer whose ardor for a given commodity is waning. Make your weekly or monthly payment and hold onto the commodity, the store's salesman might say, or you will be charged for the payments you missed, find your name turned over to a collection agency, and lose the commodities anyway.

Overall, the rent-to-own business is an extremely profitable way to take advantage of the urban poor, and the standardized, legally binding agreement is at the very heart of it. The central challenge to the agreement has involved whether it is best understood as a lease or as a installment sales agreement. A lease for personal property such as a television is a contract by which the owner of the property grants to the renter the right to possess, use, and enjoy the property for a period of time in exchange for periodic payments. In an installment sale, by contrast, the customer is a buyer rather than renter. The original owner usually requires the

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[20] *See* Lacko, McKernan & Hastak, *supra* note 3, at 47.
[21] *See id.*
[22] *See* Hawkins, *supra* note 17, at 2055.
[23] *See id*.

buyer to make a down payment and then collects payment for the balance in installments paid over time. In return for accepting installment payments, the seller charges interest and penalty fees, and these help insure that the sale is profitable once it is finally complete or even if it does not quite pan out.

With a lease as opposed to an installment sale, the operator of a rent-to-own outlet is in a much better position. He or she can simply reclaim the good if rental payments are not made in full, and the customer is not awarded any of the value of the good. With an installment sale, by contrast, customers have a partial, legally recognized interest in the goods even if they are unable to make all of their installment payments for the goods. Customers might be given notice if the goods are being re-sold and have chance to them back, or customers might simply get some money if the goods are sold for more than the customer owes on them. In addition, if the conditional sale includes interest payments, as is usually the case, there are federal consumer protection laws and state usury laws requiring the disclosure of the terms and setting limits on how much interest can be charged.[24]

More will be said about litigation revolving around this issue later in this article, but suffice it to say for now that even if courts recognize that rent-to-own transactions are really installment sales, the rent-to-own business is hardly doomed. The business might become somewhat less profitable, but the business surely remains viable given the longing for commodities that has been cultivated among the urban poor. Rent-to-own outlets, according to Brooklyn consumer advocate Taharka Robinson, "prey upon the financially illiterate in certain

[24] *See*, for example, the Truth in Lending Act, 15 U.S.C. 1601-1677 (2000).

communities."[25] The local rent-to-loan outlet is a place at which the urban poor seek to satisfy their desire for relatively expensive consumer goods.

III. Payday Lending

Should rent-to-own customers be dissatisfied with the selection available at the local Rent-A-Center or simply want to shop at the same stores as middle and upper-class Americans, they can turn to businesses for cash to use for the purchase of commodities. Commonly known as "payday lenders," these businesses are ubiquitous in the center-city. While the business did not even exist as recently as 1990, there were as many as 25,000 outlets as of 2009.[26]

Payday lenders, then, are specialized operators in what one scholar has described as contemporary society's "massive extension of consumer credit."[27] Even in the aftermath of the recent recession, consumer borrowing has surged, reaching its highest peak in more than a decade in March, 2012.[28] Indeed, the recession and its aftermath make consumer borrowing even more likely. According to Millan Mulraine, a strategist at New York's TD Securities, "When the economy's not doing well, that's when you want the consumers to spend, and if it means borrowing to do that, then that certainly would be encouraged." [29]

Prominent banks, it might be noted, are complicit in this orgy of borrowing of borrowing from payday lenders. The different types of lenders in the United States are interconnected.

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[25] *Rent-A-Center Is a Rip-Off That Preys on the Poor*, http://www.nydailynews.com/opinion/rent-a-center-ripoff-preys-poor-article-1.420198 (last visited April 13, 2013).
[26] *See* Kim Christensen, *Payday Loans Mushroom*, http://.www.triblive.com/x/pittsburghtrib/business/s606566.html (last visited April 13, 2013).
[27] *See* Dunn, *supra* note 12, at 123.
[28] *See* "Consumer Credit in U.S. Increases by Most in 10 Years," http://www.blomberg.com/news/print/2012-05-07/consumer-credit-u-s-rose-in march-by-most- in-over-10-years.html (last visited July 24, 2012)
[29] "Consumer Credit in U.S. Rises by $17.1 Billion, Fed Says," http://www.bloomberg.com/news/print/2012-07-09/consumer-credit-in-u-s-jumped-by-17.1-billion-in may-fed-says.html (last visited July 24, 2012).

Banks such as JPMorgan Chase, Bank of America, and Wells Fargo are crucial in the operations of payday lenders. These banks enable the payday lenders to withdraw payments automatically from their customers' checking accounts, even in those states which prohibit payday lending.[30] The traditional banks say they are merely accommodating payday lenders whose customers have authorized them to withdraw money from their accounts to pay off loans. The banks actions might seem trivial in the overall scheme of things, but the payday customers are often operating close to their personal financial margins. The withdrawals often constitute overdrafts, for which substantial fees are charged. According to a report from the Pew Charitable Trust, "Roughly 27 percent of payday loan borrowers say that the loans caused them to overdraw their accounts . . . ."[31]

Payday lenders themselves, meanwhile, are thriving because they provide quick and easy loans for those strapped for cash. In general, a payday borrower need not necessarily have a job or a "payday." Basically, a would-be borrower need only have a checking account and identification in the form of a driver's license, passport, pay stub, bank statement, or even a telephone bill.[32] Lenders do not conduct a credit check or ask for references, and, indeed, some boast of how quickly they can process a loan application: "In and out the door in five minutes with no hassles" is the type of promise a payday lender might make.[33]

As is true with rent-to-own transactions, a well-crafted, standardized contractual agreement is at the very heart of payday loans. Under the terms of the loan agreement, a borrower provides a signed check for the amount of the loan he or she wants plus a stipulated fee. The fee is usually a percentage of the loan. The lender then agrees to hold onto the check,

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[30] *See* Jessica Silver-Greenberg, *Banks Are a Key in the Machinery of Payday Loans*, N.Y. TIMES; FEB. 24, 2013; A1.
[31] *See id.* at A19.
[32] *See* Creola Johnson, *Payday Loans: Shrewd Business or Payday Lending?* 87 MINN. L. REV. 1, 9 (2002).
[33] *See id.*

knowing in advance that it is highly unlikely that funds would be available in the borrower's checking account to cover the amount of the check. Why, after all, would the borrower even turn to a payday lender if he or she could simply take the funds from an existing account?[34]

The loan agreement includes a maturity date a few weeks of perhaps a month subsequent to the date on which the agreement was signed. As of that date, the borrower has three options: (1) pay off the amount of the check with cash or a money order, (2) let the payday lender cash the check (usually through one of the previously mentioned established banks), or (3) pay just the fee and renew the loan by agreeing to pay another fee. Lenders have a strong preference for the third option, which in effect amounts to a refinancing of the loan at the same high rate that was officially stipulated.

Such refinancing is known in the business as a "roll-over" and is quite common. According to the Center for Responsible Lending, the average payday loan is refinanced eight times.[35] Roll-overs are in fact the key to profit-making in payday lending's business model. It not only extends the period set for repayment under the original agreement but also can be done time and again. In the end, the refinancing totals routinely exceed the original loan amount. In the previously mentioned calculations from the Center for Responsible Lending, average payday loan indebtedness jumped from $325 to $793 because of the roll-overs.[36] According to Nathalie Martin, a law professor the University of New Mexico who has studied payday lending, "While the going rate is between 400 and 600% per annum, some payday loans exceed 1,000% per annum."[37]

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[34] Shane Mendenhall, *Payday Loans: The Effects of Predatory Lending on Society and the Need for More State and Federal Regulation*, 32 OKL. CITY U. L. REV. 299, 331 (2007).
[35] *See* Christiansen, *supra* note 26.
[36] *See id.*
[37] Nathalie Martin, *Regulating Payday Loans: Why This Should Make the CFPB's Short List*, 2 HARV. BUS. L. REV. ONLINE 44, 46 (2011), http://www.hblr.org/?p+1595.

Many borrowers in the end are no more able to pay the mushrooming fees than they are able to pay back the loan. At this point, the agreement authorizes the payday lender to turn to collection agencies and the small claim courts. It appears that even against the backdrop of general collections practices, the tactics used to collect from payday borrowers are particularly tawdry.[38] Indeed, it seems that many loan agreements themselves include clauses designed to facilitate unusually aggressive collections practices.[39]

One reason borrowers might tolerate the distasteful collections practices is that most of them are poor.[40] The poor, after all, have limited social capital and virtually nothing in the way of back-up or emergency funds. Furthermore, they have in a sense become accustomed to rude treatment from neighborhood merchants and from government officials. If a collections agent complains about a deadbeat debtor to a borrower's relatives or threatens to report the debtor to the police, what else is new?

Payday lenders defend their targeting of the urban poor by saying it makes funds available for those who cannot turn to banks and traditional lenders. The defenders of payday lender admit these borrowers are often impoverished and concentrated in minority neighborhoods, but according to the champions of payday lending, these people should be as free as other Americans to consume to their hearts' content. It would be paternalistic, the argument goes, to take payday lending away from borrowers who have knowingly decided to pay huge amounts for the loans they need for their purchases.

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[38] *See* Johnson, *supra* note 32, at 77-78.

[39] *Id.* Practices include harassing customers' relatives, overstating possible damages, and even threatening violence. *Id. a*t 78.

[40] With regard to the targeting of the urban poor by payday lenders, *see* Jane Cover, Amy Fuhrman Spring & Rachel Garshick Kleit, *Minorities on the Margins? The Spatial Organization of Fringe Banking Services*, 33 J. URB. AFFAIRS 317 (2011) and Alice Gallmeyer & Wade T. Roberts, *Payday Lenders and Economically Distressed Communities: A Spatial Analysis of Financial Predation*, 46 SOC. SCI. J. 521 (2008).

This pitch has been supported by some conservative economists. Paige Marta Skiba, for example, has argued that "credit in general allows consumers to smooth consumption over time, meaning that they borrow from future good times to help make it through current tough times."[41] Such "smoothing" is common, the argument goes, and we think little of it when students acquire loans to pay college bills, small business owners borrow to make improvements, or consumers use credit to buy motor vehicles. Yet when payday lenders make their loans, their conduct seems immoral and usurious. "While triple-digit interest rates may sound outrageous," Skiba says, "borrowing against future paychecks at such a high APR can be worth it if consumers' marginal utility is raised sufficiently to outweigh the expenditure they will make on interest."

Unfortunately, the business spolesmen and conservative economists do not not satisfactorily acknowledge that payday lending is consciously geared to putting the urban poor into ever-larger debt as they struggle to pay their roll-over fees and loans. Payday lending uses standardized loan agreements to drive borrowers into worse poverty by getting them onto what Lynn Drysdale and Kathleen E. Keest have described as "at best, a 'debt treadmill' or, at worst, a downward spiral."[42] Payday lenders know most borrowers will not to pay back their loans in a timely fashion. The borrowers ride the treadmill by borrowing again and then once again. Treadmills keep moving, but in the end they leave you nowhere but tired.

The net effect of this is to worsen the urban poor's already unenviable economic position. According to Shane M. Mendenhall in his study of payday lending, "In effect, the payday loan industry is single-handedly broadening the gap between the wealthy and the poor. Because payday loan borrowers are not even able to live paycheck to paycheck, they are falling further

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[41] Paige Marta Skiba, *Regulation of Payday Loans: Misguided?* 69 WASH. & LEE L. REV. 1023, 1026 (2012).
[42] Lynn Drysdale & Kathleen E. Keest, *The Two-Tiered Consumer Financial Services Marketplace: The Fringe Banking System and Its Challenges to Current Thinking About the Role of Usury Laws in Today's Society*, 51 S.C. L. REV. 589, 605 (2000).

below the poverty line."[43] The economic situation of payday borrowers is so bad that one scholar has even compared it to peonage.[44]

IV. Title Pawns

Many members of the urban poor have still another financing option for their commodity purchases: the title pawn. It might be located just down the block from the payday lender, and in fact, payday lenders also sometimes offer title loans. Regardless of location, title pawns are prepared to provide high-interest loans if would-be borrowers can produce title to a motor vehicle. To say the title pawn business is thriving is an understatement. In Florida, one of the states in which title pawns are most entrenched, they write an incredible $225 million in loans annually.[45]

A motor vehicle or, better put, the lack thereof is a major factor in the previously mentioned pattern of the poor paying more for everything from food to high-priced consumer goods.[46] One data-based study done in Buffalo, New York and its suburbs found that a major factor affecting a consumer's search for lower prices is "not her residential area or the poverty level per se but whether or not she owns a car."[47] Buffalo's poor without motor vehicles were only one-quarter as likely to actively search for lower prices than either the non-poor or poor

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[43] *See* Mendenhall, *supra* note 34, at 331.

[44] Zoe Elizabeth Lees, *Payday Peonage: Thirteenth Amendment Implications in Payday Lending*, 15 SCHOLAR: ST. MARY'S L. REV. ON RACE & JUSTICE 63 (2012).

[45] See Drysdale & Keest, *supra* note 42, at 591, fn. 4.

[46] *See* Brown, *supra* note 2, at C01.

[47] Debrabrata Talukdar, *Cost of Being Poor: Retail Price and Consumer Price S Differences across Inner-City and Suburban Neighborhoods*, 35 J. CONSUMER RES. 457, 457 (2008).

households with a car.[48] Not surprisingly, most of those unable to search for lower prices end up paying more.

A motor vehicle is crucial when it comes to finding and maintaining employment. The most common jobs for the urban poor are in fast-food restaurants and malls, and these jobs for the most part are not within walking distance of where the urban poor live. According to the Brookings Institute's Metropolitan Policy Program, "In the nation's 100 largest metropolitan areas, nearly half of all the jobs lie more than 10 miles from the downtown core."[49] A second Brookings Institute study reveals that "the typical job in a major metro area is accessible to only 27 percent of all working age adults within an hour-and-a-half commute on public transportation."[50]

As if these figures are not sobering enough, the urban mass transit systems to which the working-poor might turn are in severe decline. "A decades-long trend of prioritizing automobile use at the expense of public transport has undercut an important means of improving the lives of low-income Americans in urban areas."[51] As a result, the working-poor turn to motor vehicles to get to work. "A very large proportion of the U.S. workers who live in poorer households (and who do have cars) do drive to work."[52]

Given a reliance on cars to get to work, it is risky for the working-poor to turn to title pawns to finance their commodity purchases. Such borrowing, "clouds the title" of the working-poor's most valuable asset *and* jeopardizes the working-poor's employment. Title pawns are hardly the only reason why so many men and women from impoverished center cities lose what

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[48] *Id.*
[49] "Unemployment Problem Includes Public Transportation That Separates Poor from Jobs," http://www.huffintonpost.com/2012/07/11/unemployment-problem-includes-public-transportation_n_1660344.html (last visited July 24, 2012).
[50] *Id.*
[51] Patrick Moulding, *Fare or Unfair? The Importance of Mass Transit for America's Poor*, 12 GEO. J. ON POVERTY L. AND POL'Y 155, 155 (2005).
[52] *Id*. At 165.

were lousy jobs in the first place, but title pawns are a contributing factor to unemployment. They are partially responsible for some portion of the working-poor becoming just poor. According to William White, senior vice president of Cash America International, "Somebody forfeits their VCR, life goes on. But you lose your car, that's a different ballgame. Now you're talking about somebody's livelihood."[53]

The distinction might be lost on the average borrower, but the agreement at the center of the title pawn business is a variety of security agreement. When entering into a security agreement, a party proffers collateral to back up his or her promise to make payments that are becoming due or to pay off a loan. If the party does not pay in a timely manner, the lender can claim all or at least part of the collateral. The collateral is the source of the lender's security.

A classic example of a security agreement is the one between a customer and a pawnbroker, although pawnbrokers take as collateral not title to personal property but rather personal property itself. Customers in need of quick cash can bring their valuable possessions – jewelry, televisions, musical instruments, and the like – to the pawnbroker, who would provide cash while holding onto the possessions. The customer can then reclaim the possessions by buying them out of hock at a higher price. The pawnbroker, meanwhile, has the option of selling the possessions to a third party if reclamation is not forthcoming. In days gone by, some thought pawnbrokers dealt primarily in stolen goods, and this presumption, along with the image of desperate debtors pleading for just a little more cash from the pawnbroker, tarnished the collective reputation of the business. The business declined only to experience a revival of sorts in the present with national chains. In fact, pawnbrokers seem to have acquired something

[53] Joseph B. Cahill, *License to Owe: Title-Loan Firms Offer Car Owners a Solution That Often Backfires,* http://www.wsj.com/classroom/archive/wsjce.99may.ymm.html (last visited April 12, 2013).

resembling a romantic cachet, as witnessed by the surprising popularity of such television reality shows as “Pawn Stars” and “Hardcore Pawn” set, respectively, in Las Vegas and Detroit.

As previously noted, under the terms of a title pawn’s security agreement, the borrower does not turn over his or her motor vehicle but rather takes the vehicle’s title to secure the loan. Title to a piece of property is an indication that the title-holder justly owns the property. Legally speaking, title to a motor vehicle is not merely the piece of paper issued by a state’s department of motor vehicles but rather the paramount ownership that piece of paper symbolizes. In addition to taking the title or at least a copy of it, some title pawns require a set of keys for the motor vehicle in order to facilitate taking possession of it if payments on the loan go unpaid.

It appears that the viability and size of the title loan depends more on the value of the motor vehicle offered as collateral than on the credit history of the borrower. The loan can be for anything between one-third and two-thirds of the resale value of the motor vehicle, although there are instances in which title loans are made for the entire value of the car.[54]

The typical loan is relatively small - $250 to $1000 – and repayment is usually due after one month.[55] However, as is the case with payday borrowers, customers at title pawns are frequently unable to pay back the loans by the end of the stipulated period. The title pawn is then only too happy to allow the loan to roll over for another month, charging a new fee for this option. In fact, unlike rent-to-own outlets, at which customers in effect renew their transaction frequently, some title pawns are able to renew the agreement automatically, and the borrower does not even have to return to the lender’s office to sign additional papers.

Roll-overs can occur and do occur time and again, resulting in what amounts to an extraordinary interest rate as the borrower rides a “debt treadmill” into tighter and tighter

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[54] *See* Todd J. Zywicki, *Consumer Use and Government Regulation of Title Pledge Lending*, 22 LOY. CONSUMER L. REV. 425, 433 (2010).
[55] *See id.*

financial straits. Surveys of borrowers from title pawns have found they routinely pay triple-digit interest rates, and many borrowers end up paying back appreciably more in interest than they borrowed at the outset.[56] Indeed, there are reported instances of borrowers paying over 800% in interest![57] Should borrowers realize how outrageous the interest is, the borrowers might be hard-pressed to challenge things in court. Many resourceful title pawns insert binding mandatory arbitration clauses in the security agreement in order to prevent borrowers from mounting a class action.[58]

If the borrower cannot make the interest payments or perhaps simply wants to get off his or her part of the "debt treadmill," the security agreement enables the title pawn to take possession of the motor vehicle. According to data from Tennessee, 14-17% of borrowers are unable to make their interest payments, and title pawns take possession of roughly one-half of the motor vehicles to which they are entitled.[59] The vehicles can be routed to used car auctions or to used car lots, some of which are located next door to the title pawns.[60] As for the other half of the motor vehicles, many have serious mechanical problems or structural damage. Some have been totaled or junked. Others quite simply were not worth that much at the outset of the borrowing process. In all of these cases, the title pawn makes the business decision that the cost of taking possession and trying to re-sell the motor vehicle is greater than what might be received through a resale.

As is the true with rent-to-own operators and payday lenders, title pawns have their defenders. One of the arguments supporting title pawns is that the borrowers would pay even

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[56] See Center for Responsible Lending, *Car Title Lending: Driving Borrowers to Ruin* 5 (2005).
[57] *See id.*
[58] *See id.* at 4-5.
[59] *See* Zywicki, *supra* note 54, at 435.
[60] *See* Drysdale & Keest, *supra* note 42, at 5.

more if they had to turn to "inferior forms of credit."[61] According to Todd J. Zywicki, "If deprived access to title loans, many consumers would substitute less-preferred sources of credit or risk losing access to credit altogether."[62] Another argument is that borrowers who turn to title pawns are not necessarily ensnared like unsuspecting animals in a trap. Informed borrowers are supposedly making intelligent, rational decisions to turn to title loans to meet short-term emergency liquidity crises, and others use title loans to finance small business operations."[63]

A major blind spot among the defenders of title pawns is their failure to appreciate how much the industry focuses on the urban poor. Defenders of the industry might like to believe some large portion of title pawns' customers belong to the middle class or perhaps are small businessmen, but in reality, many are poor and lusting for commodities. When a poor borrower drives straight from the tile pawn to Walmart or maybe even Rent-A-Center, one suspects the loan is not designed to relieve a mortgage crisis or to enable the borrower to pursue a fast-breaking business opportunity. Title pawns refer to a business model and use a security agreement geared to the urban poor or at least that part of the urban poor with motor vehicles. Scholars Nathalie Martin and Ernesto Longa have analyzed data from several sources. Illinois data show that title loan customers earn an average of $19,808; in New Mexico the average title loan borrower makes between $20,116 and $27,719.[64] According to Martin and Longa, "[R]ather than being middle class, most borrowers are near or below the poverty line."[65]

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[61] Jim Hawkins, *Credit on Wheels: The Law and Business of Auto-Title Lending*, 69 WASH. & LEE L. REV. 535, 590 (2012).
[62] Zywicki, *supra* note 54, at 427.
[63] Hawkins, *Credit on Wheels*, *supra* note 61, at 590.
[64] Nathalie Martin & Ernesto Longa, *High-Interest Loans and Class: Do Payday and Title Loans Really Serve the Middle Class?* 24 LOY. CONSUMER L. REV. 524, 550 (20112).
[65] *Id*.

The title pawns realize, of course, that their typical borrowers can ill afford such high-cost, short-term balloon loans.[66] Poor borrowers are especially unlikely to be able to pay back the loans and especially likely to incur the extraordinary high interest charges. "Borrowers across the country find themselves sucked into a spiral of debt, paying more and more fees while the principle on the loan remains largely unchanged."[67] When an impoverished city-dweller signs the dotted line of a security agreement at a title pawn, he or she has not found a way out of a financial pinch but rather has begun a process by which the pinch will become more and more painful.

V. Liberal Reform

Given the exploitative features of rent-to-own, payday, and title pawn business practices and contractual agreements, it is not surprising that they have attracted the ire of consumer advocates and community activists. Litigation and lobbying in legislatures have followed, usually marked by the familiar incrementalism and optimism of liberal reform. We can correct and improve the rent-to-own, payday lending, and title pawn business through law, the thinking goes. And indeed, some limited victories have been won. However, the exploitation continues, and the victories have a Pyrrhic character in that they legitimate these suspect businesses.

The most important litigation has tended to involve just how it is we might legally conceptualize the rent-to-own, payday lending, and title pawn businesses. In the rent-to-own area, litigation involving Hilda Perez and a New Jersey rent-to-own outlet has attracted the most attention. In 2001 and 2002, Perez, a cook from Camden, launched five rent-to-own transactions

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[66] *See C*enter for Responsible Lending, *supra* note 56, at 6.
[67] *Id.*

at the local Rent-A-Center. She acquired furniture, a washer-dryer, a DVD player, a computer, and a large television with cabinet, and she signed a standardized agreement for each acquisition. The forms required her to make weekly payments on the various goods, and she was also subject to penalty fees if payments were not made. At the top of each agreement a statement in capital letters read: "THIS IS A RENTAL AGREEMENT ONLY." Rent-A-Center repeated the statement at later points in the agreements, and lest anyone fail to appreciate the point, the agreement also said: "We own the property you are renting."

But was the core agreement best understood as a rental lease? Perez sued, arguing it was not. She lost in the trial court and the lower-level appellate court, but when the New Jersey Supreme Court made its final ruling in the case, Justice Virginia Long discussed at great length the manner in which the goods were sold and acquired. Together, all the consumer goods Perez supposedly had rented had a cash price of $9,301.72. That is roughly what a customer would have paid for them at the local Target. However, if Perez had somehow been able to make all her weekly payments on the goods, she would have paid a total of $18,613.32 – over 100% more than the cash price.[68] Perez stopped making payments well before she could claim to have purchased the goods, but one wonders if there was any chance that she could actually have "rented" the goods for a long enough time to ever "own" them.

Justice Long also called on an actuary named James Hart to comment on how the "rental" payments looked if considered as installment payments with interest. He calculated that the annual interest rates on selected goods purchase by Perez as follows:

Washer-dryer	79.2%
Furniture	82.7%

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[68] *See* Perez, *supra* note 5, at 1260.

DVD player 79.2% to 82.7%[69]

Seeing these figures was enough to convince Justice Long and a majority of her Supreme Court brethren that the Rent-A-Center "rental" really amounted to a high-interest installment sale. Perez's agreement with Rent-A-Center, they concluded, was covered by New Jersey's Retail Installment Act and also was in violation of the state's criminal usury statute because the interest was higher than allowed.[70]

Decisions regarding payday lending and title pawns have not been as dramatic and pointed as the *Perez* decision regarding the rent-to-own business, but these decisions have in their own way clarified just how it is we might conceptualize these businesses. The payday lending decisions in general have rejected the claim of payday lenders that they should be seen merely as providers of check-cashing services rather than as lenders, a claim which would free the payday lenders from limits imposed by state usury laws.[71] The United States District Court for the Eastern District of Kentucky, for example, found payday lending was in fact a loan-making enterprise and subject to the state's usury laws,[72] and in later litigation the Kentucky Supreme Court agreed with this interpretation.[73]

Title pawns, meanwhile, have attempted to argue that they are the equivalent of traditional pawnbrokers in hopes of claiming the exception the latter have under most state usury laws.[74] As noted earlier in this article, however, while both pawnbrokers and title pawns rely on security agreements, title pawns do not actually hold the personal property as collateral as do

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[69] *See id.* at 1260, fn. 5.
[70] Retail Installment Sales Act, N.J.S.A. 17:16C-1 to 16 and N.J.S.A. 2C:21-19. The latter barred annual interest rates higher than 30%).
[71] *See* Drysdale & Keest, *supra* note 42, at 641-42.
[72] Hamilton v. York, 987 F. Supp. 953 (E.D. Ky. 1997).
[73] White v. Check Holder, Inc., 996 S.W.2d 496 (Ky. 1999).
[74] *See* Drysdale & Keest, *supra* note 42, at 639.

pawnbrokers. Title pawns hold only a motor vehicle's title. Hence, a number of courts have precluded title pawns from the pawnbroker exception.[75]

The various businesses discussed in this article have also been highly scrutinized by state legislatures concerned with the exploitation of the poor and the working-poor, although some of these legislatures appear to be focused on "consumer affairs" rather than socio-economic inequalities. A bevy of legislatives feints and stabs have resulted, and Susan Lorde Martin and Nancy White Huckins have provided a useful summary of what has been done.[76] The great majority of states have laws that regulate rent-to-own transactions, most commonly requiring that rent-to-own outlets disclose the amount of each rent payment, the number of payments necessary to acquire a given commodity, and any fees that might be charged for delivery, late payments, and reinstatement of an agreement.[77] A smaller number of laws also require outlets to provide, depending on the state, either the cash price if the commodities were bought at the standard retailer or the fair market value of the commodity.[78]

The state legislatures have also tinkered in comparable ways with payday lending, and, in fact, in 2010 Wisconsin became the very last state to enact at least some payday lending legislation.[79] Typically, states restrict the financing fees charged in conjunction with a loan, place a limit on loan amounts, and/or limit the number of roll-overs within a given transaction.[80]

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[75] *See* Pendleton v. American Title Brokers, 754 F. Supp. 860 (S.D. Ala. 1991); Lynn v. Financial Solutions Corp., 173 B.R. 894 (Bankr. M.D. Tenn. 1994); State ex rel. McGraw v. Pawn America, 518 S.E. 2d 859 (W. Va. 1998).
[76] *See* Susan Lorde Martin & Nancy White Huckins, *Consumer Advocates vs. The Rent-to-Own Industry: Reaching a Reasonable Accommodation*, 34 AM. BUS. L.J. 385, 396-408 (1997).
[77] *Id.* at 396-97.
[78] *Id.* at 396.
[79] *See* Patrick Marley, *Payday Lenders Escape Limits*, MILWAUKEE JOURNAL SENTINEL; Dec. 10, 2012; 11A.
[80] *See* Mendenhall, *supra* note 34, at 528.

Some states have also explicitly brought payday lenders under state usury laws, which impose limits on interest rates.[81]

Most states have also enacted comparable laws regarding title pawns, with the most common approach being an interest rate cap. No uniformity exists among the states that have imposed such caps, but it appears than an interest cap of 36% is emerging as something of an unofficial national standard. As of 2012, seventeen states and Washington, D.C. had a 36% interest cap.[82] The percentage on its surface seems arbitrary and even random, but it is prompted by federal law which caps interest on loans to active-duty military personnel at 36%.[83]

Some states also limit the size of the loan that can be offered by a title pawn and/or restrict the number of roll-overs. The simplest limit on the size of a loan is a fixed dollar amount that would apply to all loans regardless of the resale value of the motor vehicle for which the title is offered as collateral.[84] A common amount in this regard is $2,500.[85] Some of the more innovative state laws, meanwhile, attempt to limit the size of the loan with reference to the borrower's ability to repay the loan. This could involve a requirement that the title pawn look into the borrower's income, other indebtedness, and credit rating to gauge the borrower's overall financial wherewithal.[86] Illinois, meanwhile, has cut to the quick by barring any loans with a single payment exceeding 50% of the borrower's monthly income.[87] With regard to roll-overs,

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[81] *See id.* For a general discussion of the usefulness of usury laws in regulating payday lending, *see* John D. Skees, *The Resurrection of Historic Usury Principles for Consumption Loans in a Federal Banking System*, 55 CATH. U. L. REV. 1131 (2006).
[82] *See* Martin and Longa, *supra* note 64, at 525.
[83] *See id.* at 574.
[84] *See* Hawkins, *Credit on Wheels, supra* note 61, at 586.
[85] *See id.*
[86] *See id.* at 587.
[87] *See id. a*t 588.

states might simply set a fixed number or, perhaps, require that after a set number of roll-overs title pawns must begin reducing the loan's principle.[88]

Do the leading judicial decisions and most important state laws related to the rent-to-own, payday lending, and title pawn businesses protect the urban poor from exploitation? Do the decisions and laws at least have the potential to protect the urban poor? One has reason to think not, largely because rent-to-own operations, payday lenders, and title pawns have sophisticated, adjustable business models and use core agreements that enable them to elude whatever snares well-intentioned judges and legislators set for them.

No fan of usury regulations in general, Todd J. Zywicki has cogently outlined the ways businesses preying on the poor might get around the regulations.[89] In Zywicki's opinion, what this article has dubbed "liberal reform" invariably produces negative unintended consequences exceeding any benefits.[90] The businesses might, for example, engage in re-pricing, the process by which the businesses increase the price of unregulated parts of the transaction or on related products in order to offset what might be lost to usury limitations. A rent-to-own outlet, for example is quite willing to bundle the core transaction with insurance sales.[91] If usury caps limit what may be charged for an installment sale, the cost of insurance can easily be jacked up. "The final result," Zywicki argues, "will be to vitiate many of the extended benefits of the regulation by circumventing the intended effects of price controls. This would make consumers worse off as a group by encouraging a new pricing system that is less efficient and less transparent than that which would otherwise prevail."[92]

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[88] *See id. at 584.*
[89] *See* Zywicki, *supra* note 54, at 427-32.
[90] *See id.* at 427.
[91] *See* Hawkins, *Renting the Good Life, supra* note , at 2055.
[92] *See* Zywicki, *supra* note 54, at 429.

The businesses might also engage in product substitution in order to avoid rate caps. A payday lender, for example, could offer a rent-to-own arrangement or a title loan or even operate as an old-fashioned pawnbroker, assuming the latter possibilities are unregulated. "Some commentators, for instance, have claimed that the growth of auto title lending in some state resulted from regulations that eliminated payday lending."[93] Then, too, payday lenders in Wisconsin shifted to what they call "installment loans," extremely high-interest loans that are not covered by the state's payday lending regulation. Some of these installment loans have annual interest rates of over 500%.[94] An outside observer might think borrowers would realize these loans are as exploitative as payday loans, but "many of the people who accept them are unsophisticated and unable to understand the ramifications of such loans."[95] According to one disappointed Wisconsin legal services attorney, "This is an industry that just kind of morphs depending on the law to regulate them."[96]

In the end, rent-to-own outlets, payday lenders, and title pawns are still doing business and still still focusing on the urban poor more so than any other group. After its loss in the Perez litigation, Rent-A-Center agreed to pay class action plaintiffs $109 million. The settlement was to reimburse New Jersey consumers who entered into agreements with Rent-A-Center between April 23, 1997 and March 16, 2007 for the amounts their payments exceeded what would have been allowable under New Jersey's usury limits.[97] Even in light of the huge settlement, the company seemed genuinely nonplussed. For the first quarter of 2007, Rent-A-Center reported revenues of $755.3 million, and a company spokesman said Rent-A-Center could easily finance

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[93] *See* Zywicki, *supra* note 54, at 431.
[94] *See* Marley, *supra* note 79, at 1A.
[95] *Id.* at 11A.
[96] *Id.* at 1A.
[97] *See* "Successes," http://www.wbclegal.com/successes.php?action=view&id=37 (visited March 29, 2013).

the settlement through its regular operating budget.[98] Despite its losses in the courts and regulation from the state legislatures, payday loan outlets have come to outnumber McDonalds' and Starbucks' stores combined.[99] In California, a state known for its progressive consumer legislation, title pawns do $20 million in business annually.[100]

What's more, due to courtroom decisions and legislative enactments, the rent-to-own, payday lending, and title lending businesses have been legitimized. That is, while the courtroom decisions and regulatory legislation evidence some degree of willingness to police these tawdry businesses, the decisions and legislation implicitly recognize the businesses' right to continue their operations. Courts and legislatures do more than prescribe and proscribe; they also recognize and countenance. Buoyed not so much with the state's stamp of approval as the state's tacit acceptance, these suspect businesses are, at least in keeping with their own business models, doing well.

VI. Conclusion

From a legal perspective, it is tempting to say judicial decisions and legislative enactments are mismatched I a battle against the sophisticated contractual agreements proffered by the rent-to-own, payday lending, and title pawn businesses. But this type of perceived legal combat unduly personifies types of law and casts them as the key combatants in some kind of abstract arena. It might be better simply to say that the rent-to-own, payday lending, and title pawns businesses are all able to find and secure their places in the contemporary economy.

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[98] S*ee* Michael Booth, *Suit Over Rent-to-Own Agreements Settles for $109 Million in New Jersey*, NEW JERSEY L. J.; May 3, 2007; A1.
[99] *See* Martin and Longa, *supra* note 64, at 526.
[100] *See* David Lazarus, *Lenders Levy Up to 120% Interest – Legally*, S.F. CHRONICLE; Sept. 29., 2004; A1.

Their business models and standardized agreements are quite suitable, and selling commodities to the urban poor at high prices or lending money to the urban poor at extraordinarily high interest rates are viable American enterprises.

Perhaps in this sense we should not be surprised by the exploitation of the urban poor. The rent-to-own, payday lending, and title pawn businesses, after all, do not have a monopoly on using people and manipulating their hopes and dreams to turn a profit. They also do not have a monopoly on charging the urban poor more. One study has found a price differential between wealthy and poor neighborhoods of 10-15 % for everyday items.[101] One journalist characterized this price differential as a "ghetto tax."[102]

The even more troubling feature of these businesses, meanwhile, is that each in its own way consciously attempts to place the urban poor on a "debt treadmill." Profits go up when the urban poor cannot pay up. Hence these businesses not only exploit but also increase and perpetuate poverty.

Need this be tolerated? Some practices so fundamentally affront our shared values that they should quite simply be prohibited. It is one thing to exploit the urban poor, but it is another thing to systematically worsen their socio-economic condition and to thereby subject them to greater control and subservience. Exploitation, in other words, might be tolerable in our market economy, but subjugation should not be. You can take people's money and the value of their labor, but you not should be able to yoke them permanently or even semi-permanently to subordination. By actively making the urban poor even poorer, the rent-to-own, payday lending, and title pawn businesses do just that and should be banned.

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[101] *See* Talukdar, *supra* note 47, at 457.
[102] Erik Eckholm, *Study Documents "Ghetto Tax" Being Paid by the Urban Poor*, N.Y. TIMES; July 19, 2006; B11.