Accepted for publication in Environment and Planning A. Forthcoming June 2009

Debt, Discipline and Government:

Foreclosure and Forbearance in the Sub-Prime Mortgage Crisis

Dr Paul Langley

Senior Lecturer in Politics

School of Arts and Social Sciences

Northumbria University

Newcastle-upon-Tyne

NE1 8ST

United Kingdom

Email: paul.langley@unn.ac.uk

Debt, Discipline and Government:

Foreclosure and Forbearance in the Sub-Prime Mortgage Crisis

Abstract

The extensive punishment of debtors through foreclosure, and Federal and state support for forbearance by lenders and loan servicers, are key features of the sub-prime mortgage crisis in the United States of America. From a Foucauldian perspective, foreclosure and forbearance give rise to questions about the production and reproduction of sub-prime mortgage debt through disciplinary and governmental power relations, questions that are neglected in the dominant understanding of sub-prime as an anomalous and unregulated market realm where predatory lenders preyed on borrowers. In addressing these questions, a two stage argument is made. First, sub-prime is shown to have been largely unexceptional in the ways in which it was governed as a legitimate and highly profitable part of a mass mortgage market prior to the crisis: legal processes of foreclosure combined with disciplinary technologies for the calculation of risk and the calling-up of responsible, entrepreneurial and self-disciplined financial subjects. Second, it follows that forbearance, as an apparently progressive response to the crisis, is actually deeply ambivalent and more politically problematic than activists and supporters typically acknowledge. Forbearance does suspend disciplinary norms, opening-up space for disagreement over whether lenders should be co-responsible with borrowers for the reproduction of mortgages into the future. But, simultaneously, forbearance closes-down the prospects for co-responsibility beyond immediate debt rescheduling, and reinforces the legal, calculative and self-disciplinary operation of power.

Debt, Discipline and Government:

Foreclosure and Forbearance in the Sub-Prime Mortgage Crisis

Introduction: 'About 1 in 11 mortgageholders face loan problems'

According to the Mortgage Bankers Association's (MBA) National Delinquency Survey of June 2008, and based on their quarterly monitoring of a sample of 44 million mortgage loans, 'about 1 in 11 mortgageholders face loan problems' in the United States of America (US) (Bajaj and Grynbaum 2008).[1] Although the majority of these struggling mortgagors have missed a monthly repayment and are therefore categorised as 'delinquent' by lenders, a sizeable number are said to be 'in default' as their delinquency stretches over 90 days or more. Most disturbing, however, are the large and increasing number of mortgagors who, having passed through default, are being punished through 'foreclosure'. Foreclosure is the legal process through which lenders and loan servicers exercise a right to sell, or to repossess ownership of, the property which has been pledged as security for a mortgage. The June 2008 levels of mortgage non-payment are the highest since the MBA first undertook their Survey in 1979, and represent a sharp turnaround from 2006 when delinquency, default and foreclosure were all at their lowest recorded levels.

Beneath the aggregate figures for delinquency, default and foreclosure, the MBA's Survey includes measures by loan-type (e.g. prime, sub-prime), product-type (e.g. fixed rate, adjustable rate), and state. As might be expected, these measures show that rates of delinquency, default and especially foreclosure are much higher in the 'sub-prime' sector of the market which concentrates on 'high risk' borrowers with low, irregular or unverifiable

[1] http://www.mortgagebankers.org/ResearchandForecasts/ProductsandSurveys/NationalDelinquencySurvey.htm

incomes (such as workers on temporary employment contracts or the self-employed) and/or those with poor credit histories and scores (as a consequence of no borrowing record, past failures to meet obligations or bankruptcy). Borrowers with adjustable rate mortgage products (ARMs) taken out before mid-2007 are, in particular, also experiencing major problems keeping up with their repayments. Most prevalent in the sub-prime sector, ARMs feature an introductory or 'teaser' period of low interest rates for two or three years at their outset, and then reset to much higher rates. ARMs were relatively unproblematic back in 2006 when house prices continued to rise, interest rates remained low, and remortgaging before the terms of existing ARMs reset was relatively easy.

The Survey finds, furthermore, that one-third of all mortgages presently in default or foreclosure are geographically concentrated in California and Florida. Add Texas, Michigan and Ohio, and these five states account for more than half of all foreclosures. Such spatial patterns were already becoming visible in late 2006 and, as Dan Immergluck (2008) suggests, are the result of a complex interplay of dynamics in which the geography of local housing and mortgage markets, and of state-level differences in foreclosure law, loom large. It is no accident, then, that recent punishment through foreclosure has been spatially concentrated in California's metropolitan areas, for example. California has legal provision for non-judicial foreclosure processes which are relatively quick and cheap to exercise for lenders and loan servicers. Moreover, when purchasing a new home or remortgaging to release equity in the context of especially rapid house price increases that far outstripped income growth, both prime and sub-prime borrowers in the golden state took up ARMs and other so-called 'affordability products' from the first years of the new millennium. During 2006, for instance, more than three-quarters of mortgages written in California were ARMs. This far outstripped the proportion of ARMs within mortgage lending nationally (one-quarter) and, in part, reflected the notably strong consolidation of sub-prime broking and lending in California (Bajaj and Nixon 2006a, 2006b). It has also been in California that house prices have fallen most sharply since their peak in April 2007 (Economist 2008). But headline state-level figures obscure local pockets of intense urban concentration. So, while around 1 in 450 mortgagors nationally are presently being punished through foreclosure, this ratio rises to 1 in 130 in the golden state as a whole and to 1 in 25 in Stockton, California (Clark 2008).

The scale of mortgage repayment problems, their concentration in the sub-prime sector and in certain states and cities, and projected further increases in foreclosure rates as house prices continue to fall and ARMs reset have, given their disastrous systemic consequences for housing markets going forward, provoked Federal and state initiatives in support of forbearance. 'Forbearance' implies tolerance, moderation, leniency and even forgiveness by lenders or, as is the case in sub-prime and other securitised mortgages, by loan servicers. It can take many forms, but usually refers to a set of arrangements negotiated on an individual basis to reschedule and modify a debtor's outstanding obligations. Federal and state support for forbearance is, then, far from the norm in mortgage markets where repayments are the responsibility of borrowers. Yet, the standard operating procedures of the Federal Housing Administration (FHA) were transformed in August 2007 by the Bush administration's FHASecure programme, making it possible for the FHA to insure the new mortgages of some selected delinquent borrowers for the first time. The role of the FHA in supporting forbearance was expanded further as part of the American Housing Rescue and Foreclosure Prevention Act of July 2008. The Act grants authority to the FHA to insure up to $300 billion worth of refinanced mortgages, and thereby provides this otherwise self-financed institution with a huge public subsidy. July 2008 also saw modifications to local foreclosure laws in

California, such that loan servicers are now required to exhaust all avenues in order to contact borrowers and negotiate forbearance before foreclosing.

This article responds, then, to rising foreclosure rates and Federal and state support for forbearance as key features of the sub-prime mortgage crisis. Specifically, the article seeks to address questions about the production and reproduction of sub-prime mortgage debt through disciplinary and governmental power relations that, from a broadly Foucauldian perspective, arise out of a focus on foreclosure and forbearance. Such questions are neglected in the dominant understanding of sub-prime as an anomalous and unregulated market realm where predatory lenders and brokers, with the support of the dubious wizardry of Wall Street, preyed on borrowers (see Langley 2008a, 2008b). For policy-makers, this understanding of sub-prime has licensed crisis management, including support for forbearance, and targeted regulatory initiatives. For academics and activists, meanwhile, the differentiation of sub-prime is crucial to critique and calls for action. Here predatory lending is cast, for example, as exploiting African Americans and Hispanics in particular who, 'included' in mortgage markets for the first time as the sub-prime sector expanded, are now losing their homes (e.g. Wyly et al. 2006; Wyly et al. 2007). The relational representation of sub-prime as an exceptional realm in US mortgage markets is, however, problematic. It works explicitly or implicitly to shore-up the legitimacy of mainstream lenders and borrowers. And, as such, it thereby disables a genuinely pluralist and ethical politics which might 'call some comforts of identity into question' in order to 'cultivate reciprocal respect across difference' and 'negotiate larger assemblages to set general policies' (Connolly 2002: *xiv*, *xxvi*).

A two stage argument is made below that develops in turn across the main sections of the article. First, while there can be little doubt that sub-prime lenders and brokers escaped the regulatory reach of Federal agencies, the opening section of the article argues that sub-prime was largely unexceptional in the ways in which it was governed as a legitimate and highly profitable part of a mass mortgage market prior to the crisis. Taking inspiration from the later work of Michel Foucault (1979, 2003, 2004, 2007) in particular, both prime and sub-prime mortgages are shown to have been administered through a disciplinary and governmental assemblage. This combined legal techniques for the punishment of debtors, namely foreclosure, with credit scoring and risk-based pricing as disciplinary and calculative technologies of risk. It also featured the calling-up of new forms of responsible but entrepreneurial financial self-discipline, and mortgagors as leveraged investor subjects.

Second, although Federal support for forbearance is quite remarkable when viewed against the backdrop of the long history of popular credit and seems to be a progressive response to the crisis, the remaining section of the article argues that forbearance is actually deeply ambivalent and more politically problematic than activists and supporters typically acknowledge. Widespread forbearance is certainly necessary in order to prevent large numbers of sub-prime borrowers from losing their homes. It also suspends the disciplinary norm of foreclose and punish, and thereby opens-up political space for disagreement over whether lenders should be co-responsible with borrowers for the reproduction of mortgages into the future. That primary responsibility for the reproduction of debt relations is always and everywhere the preserve of borrowers, and not lenders, is deeply engrained in financial economies and is central to the power, privilege and profits of lenders (Gelpi and Julien-Labruyère 2000). In contrast, Federal support for forbearance would seem to indicate social and collective responsibility for sub-prime mortgages, and would seem to hold out hope for cities and regions that face the prospect of devastation by foreclosures. But, as I will show, the legal, calculative and self-disciplinary form taken by forbearance arrangements ensure not only that forgiveness is limited to those judged to be deserving, but that the political prospects for co-responsibility between lender and borrower are simultaneously closed-down. In sum, forbearance initiatives are as much a continuation in the administration of a mass mortgage market as they are an exceptional political opportunity to question the operation of disciplinary and governmental power.

The Government of Sub-Prime

As crisis has hit US mortgage markets and the sub-prime sector in particular, legal processes of foreclosure that punish those who fail to keep up their repayments have come sharply into view. But a focus on foreclosure as a starting point for inquiry into sub-prime quickly begins to trouble the understanding of this sector of the mortgage market that has come to prevail in the wake of the crisis. Can the relational representation of sub-prime as an aberrational, predatory and ungoverned market realm be sustained if it shared legal processes of punishment with the mainstream market? Moreover, drawing on insights from the later work of Michel Foucault (1979, 2003, 2004, 2007), legal processes of foreclosure can be understood as but part of a wider and decentralized set of disciplinary and governmental power relations. As Rose and Valverde (1998) summarize, the privileged place of law in the administration of populations can be thought of as a reflection of a particular sovereign and centralized form of power which has been displaced but not evaporated in modern liberal societies. In their terms, ‘the legal complex’ has ‘become welded to substantive, normalizing, disciplinary and bio-political objectives having to do with the re-shaping of individual and collective conduct in relation to particular substantive conceptions of desirable ends’ (p. 543). So, although sub-prime lending was relatively distinct in that it escaped much of the Federal regulation and supervision that applied to mainstream mortgage lending (Rushton 2007), I will show in this section that both prime and sub-prime were nonetheless governed through apparatus, at work in a mass mortgage market, that combined legal processes of punishment, disciplinary and calculative technologies of risk and self-disciplinary performances.

Law, deviance and arrears management

Across centuries, law has occupied a pivotal role in the punishment of debtors as 'deviants', ensuring the actual delivery of a pound of flesh to creditors as was the case during the Roman Empire, for instance. Law was also central to the brutal imprisonment of debtors through to the mid-nineteenth century in Anglo-America, contributing to what Felix Driver (1993) calls the projects of 'moral regulation' which were key in combining the government of territory with the management of individual conduct during the early-modern period. Although no longer marked by punishment through incarceration, the law continues to morally regulate deviants in today's mass mortgage market in the US through the foreclosure processes that have devastating and degrading consequences for those who do not keep up their repayments.

The law governing foreclosure varies substantially across states, with the principal difference being whether or not judicial foreclosure is required (Edmistow and Zalneraitis 2007). Under the terms of a non-judicial foreclosure, and confronted by a mortgagor who is failing to keep up their repayments, a lender or loan servicer exercises the power of sale clause that is written into the mortgage deed of trust. To be clear, it is not the law but judicial process that is absent here, as foreclosure is, in effect, preauthorized under law. If a mortgage deed of trust does not include a power of sale clause, then the lender or loan servicer is compelled to take a deviant debtor to a local court in a process that begins with a creditor filing of a motion ('complaint to foreclose') to repossess (take ownership of) or sell a home on the basis of ‘certified default’. The debtor is given a specified period of time known as ‘pre-foreclosure’ to ‘answer’ the motion by meeting their outstanding obligations, selling their home to a third-party in order to make those payments, or objecting to it on a range of grounds. If no successful ‘answer’ results, a repossession or point of sale is eventually reached. Lenders typically repossess homes with the intention of selling them on the open market at a later date. Alternatively, the immediate sale of a foreclosed home is conducted under the auspices of the court, usually by the sheriff’s office, such that an auction resulting from judicial foreclosure proceedings is sometimes known as ‘a sheriff’s sale’.

The spectre and stigma of foreclosure was certainly normalised in the government of sub-prime mortgage networks. The sub-prime sector in many ways exemplified a wider set of tendencies in the recouping of debts from deviants that, as Burton (2008) highlights, have taken hold as a mass financial market has consolidated. Rather than adopting organisational approaches to arrears management that either reschedule on a case-by-case basis and only make recourse to the courts when a debtor deliberately avoids repayment, or which keep legal costs to a minimum by pursuing carefully chosen cases, lenders in general now tend to employ a ‘one-size-fits all’ model. This takes a standardised approach to all debtors, regardless of the individual circumstances that led to their delinquency and default (Burton 2008: 121-2). Moreover, the one-size-fits-all model of arrears management is, in effect, further reinforced as ‘in-house debt collection departments’ increasingly give way to a ‘debt sale market in personal finance’ (Burton 2008: 123). Here ‘bad loans’ are sold to third-party law firms and other intermediaries that specialise in recouping debts through the courts.

In US sub-prime networks, the growth of an extremely well-developed ‘debt sale market’ has built-up around loan servicer firms in particular. Loan servicers collect payments on behalf of a lender or, much more typically, are hired by trustees under a mortgage-backed securitisation programme to collect and distribute payments on behalf of investors. Servicers accumulate profits from three principal sources: they receive a flat-fee for each loan included within the pool of securitised mortgages for which they are responsible; they generate so-called 'float income', that is, the interest earned during the brief period between the collection of borrowers' repayments and their distribution to investors; and they charge debtors a range of default fees. As critics of mortgage servicers claim, incentives are thus present that discourage forbearance by mortgage servicers and encourage foreclosure (Porter 2007). Forbearance is not covered by the flat-fee per loan which is received by mortgage servicers, and is time-consuming and costly. Despite default fees, then, mortgage servicers are likely to rapidly pursue foreclosure. This, in turn, typically leads the mortgage servicer to sell-on the bad mortgage or to hire a specialist default/foreclosure services company who, in their turn, hire local counsel to litigate the judicial foreclosure process where this is necessary. For example, Fidelity National Default Solutions, one of the largest foreclosure service companies, provides services to 19 of top 25 residential mortgage servicers and 14 of the top 25 sub-prime loan servicers (Morgenson and Glater 2008). Foreclosure firms maximise their revenues through the speed and volume of the foreclosure cases that they successfully carry forward, and through the spurious fees (e.g. eviction and appraisal charges) that they charge to those who they file against.

Credit scoring, discipline and risk-based pricing

What of the extra-legal apparatuses that also governed both prime and sub-prime mortgage markets? As a growing body of research by geographers and social scientists has begun to explore, credit referencing and scoring feature strongly in the consolidation of mass financial markets (e.g. Leyshon and Thrift 1999; Marron 2007). As a response to the inherent problems of forging trust in dispersed and decentred markets, the apparently scientific and objective calculations of credit scoring by the principal agencies (Experian, TransUnion, and Equifax) have come to play a disciplinary role. For Burton (2008), then, trust is largely displaced in mass financial markets by the disciplinary control and forces of synchronisation and standardisation exercised through what she characterises as the 'credit panopticon' (p. 53). As studies of contemporary bankruptcy show, the vast majority of debtors who default on obligations only do so because ill-health, unemployment and/or relationship breakdown reduce their income levels and ability to make repayments (see Sullivan, Warren and Westbrook 1989, 2000). That said, to analyse these ubiquitous calculative technologies of risk solely in terms of the disciplinary operation of power remains problematic.

In broad terms, and as Deleuze (1992) highlights, Foucault was consistently concerned with the historical peculiarities, limitations and transience of disciplinary societies which began to reach their height at the outset of the twentieth-century. While for Deleuze there is thus a need in contemporary times to talk of 'societies of control' which are in the process of replacing disciplinary societies, Foucault's (1979, 2003, 2004, 2007) work on 'biopower', 'normalisation', 'security' and 'governmentality' can be read as his attempt to capture the diffuse re-encoding of power as disciplinary societies wane (Lemke 2003). Specifically, in a mass mortgage market, the incorporation of credit referencing and scoring into underwriting standards and procedures did not serve disciplinary standardisation and the exclusion of deviants, but provided the basis for inclusion and differentiation (see Marron 2007). The agglomeration of mortgagors and would-be mortgagors as a governable population of dispersed and differentiated mass financial consumers was thus extended.

Furthermore, when combined with the marketing strategies of specialist sub-prime lenders, credit scoring enabled the sorting, targeting, pricing and governing of customers through the prism of so-called 'risk-based pricing'. Sub-prime borrowers were thus categorised according to calculations as to their likelihood of default, and were charged graduated rates of interest based on these categorisations. As a broad catch-all category, sub-prime could thus include all manner of households with diverse economic and racial profiles and complex and differentiated relationships to housing and financial markets, all through the prism of risk. Risk-based pricing filled the actions of sub-prime lenders with meaning: their actions, it seemed, were grounded in calculations which ensured that it was possible to price for the future uncertainty of whether an individual borrower would meet their obligations. The charging of a considerably higher rate of interest to African American borrowers who had a poor-credit score or no trustworthy record of repayment, was, therefore, seemingly rational and beyond political questioning (Wyly et al. 2006).

The place of credit scoring and risk-based pricing in the government of sub-prime is also revealed by the course of the crisis. That risk-based pricing failed, in its own terms, to effectively price default risk has slowly come to be acknowledged by lenders, regulators and financial economists. In simple terms, the number of sub-prime mortgagors who became debtors proved to be much greater than lenders had calculated and projected. Practitioners have explained this by highlighting that the relative infancy of sub-prime networks meant that there was a lack of 'historical data' on which inferences from past statistics could be used to calculate future probabilities of default for different categories of borrower. The scrutiny and defence of risk-based pricing in the course of the crisis has thus assumed that future uncertainties could indeed be priced through vigorous calculation if sufficient 'historical data' was, or could be, stored in databases. This, however, misses the point (see Langley

2008b). Credit scoring and risk-based pricing only calculate default rates for individuals within particular and differentiated categories of borrower. They do not attempt to calculate collective future uncertainties (e.g. recession, fall in property prices, rising interest rates, increased unemployment) that will effect not only prospects for an individual borrower, but also the large numbers of borrowers on a lender's books. In the terms of those seeking to perfect the techniques of risk-based pricing (e.g. Cowan and Cowan 2004), the likelihood of 'default correlation' was not effectively dealt with by risk-based pricing in sub-prime lending.

Entrepreneurialism, self-discipline and leveraged investors

Informed by Foucault's (1979) notion of 'governmentality in particular, what several authors characterise as the 'neoliberal' or '"advanced" liberal' government of the population (e.g. O'Malley 2004; Rose 1996) comes to hinge on the responsibilisation of an entrepreneurial self. In contemporary society, individuals are obliged to provide for their own freedom and security through the opportunities and entrepreneurial choices apparently offered by the market economy. As I have argued elsewhere (Langley 2008a), the government of contemporary mass financial markets can thus be seen to feature the moral, political and technological assembly of subjects who not only meet their outstanding obligations, but who also entrepreneurially manage and manipulate those obligations to maximize their freedom and security. The important other that figures in processes of identification and in establishing what it means to be a borrower is now not simply the guilty debtor who finds their material well-being, freedom and security undermined by their imprudence, but also the individual who fails to 'play the market' and expand their access to credit.

In mortgage and housing markets, responsible owner-occupiers no longer simply meet their outstanding payments in order to maintain their home as a space of shelter and refuge that provides freedom and security. An important other in processes of identification does indeed remain the figure of the dependent, trapped and insecure renter who spends 'dead money' (Grey 1997). Yet, with the assembly of home-owner subjects in the context of the government of mass mortgage markets and so-called 'asset-based welfare' programmes, what matters is what kind of investment asset you own (Smith 2008; Ronald 2008). Owner-occupation by mortgagors is now not only a housing strategy, but also an entrepreneurial and financial strategy as the home becomes an object of leveraged investment. Mortgagors are called-up as leveraged investors who, while keeping up their monthly repayments, also perform a range of new financial self-disciplines. For example, mortgagors are likely to: commit a much greater proportion of their income to mortgage repayments than was the norm in the past; take-up mortgage products (e.g. interest-only, flexible) that enable them to reduce and manage repayments, at least in the short-term; move home or 'flip' at regular intervals in order to 'trade up the housing ladder' in a rising market; and actively remortgage to take advantage of favourable moves in interest rates and lenders' 'special offers'.

The assembly of leveraged investors was common to both the prime and sub-prime mortgage markets in the United States, especially as housing markets boomed. Indeed, under the guise of creating an asset-rich and Republican-voting 'ownership society', the Bush administration set out a programme in July 2002 to increase the number of minority homeowners by 5.5 million (Becker et. al 2008). Although $200 million in Federal support for down payments was made available to first-time buyers and ambitious new goals were set for low-income lending by Government Sponsored Enterprises (GSEs) Fannie Mae and Freddie Mac, it was the sub-prime sector that, already growing at an annual rate of 25% between 1994 and 2003, provided the key to extending the asset-based welfare vision. For many low-income, African American and Hispanic would-be home-owners, getting ‘a foot on the property ladder’ seemed all the more pressing in a rising property market, but their largely stagnant incomes and high risk status ensured that their apparent prospects as leveraged investors turned on the availability of sub-prime mortgages.

Interest-only and adjustable rate mortgages, coming to predominate in the sub-prime sector from the first years of the new millennium (Immergluck 2008), both enabled affordability and explicitly called-up calculative and leveraged investors who embraced risk in a rising property market. Underpinning these affordability products in general, and interest-only ARMs in particular, is the assumption that house prices will rise. Reducing repayments in the short-term is thus not simply a responsible affordability strategy that enables owner-occupation, but also an entrepreneurial strategy of leveraged investment. At the same time, the entrepreneurial manipulation of outstanding obligations is an important self-discipline within an interest-only ARM, as the mortgagor will take up a ‘refi’ before the reset date when monthly payments rise. House price rises during the initial option period are assumed to have created equity that can be ‘cashed out’ to meet the future and higher repayments of a refinanced mortgage.

Within the government of sub-prime, the significance of the summoning-up of leveraged investor subjects, and of ARMs that enable leveraged investment in rising markets, was also revealed by the unfolding of the crisis. While there can be little doubt that many sub-prime mortgagors signed-up for interest-only ARM products without fully or even partly appreciating their calculative mechanics, it was nonetheless through these contradictory devices that borrowers became severely exposed to interest rate and house price uncertainties.

A nasty surprise lay in store for those who took out their interest-only ARMs during 2004 and 2005: interest rates rose and house prices fell during their initial option or 'teaser' periods (Bajaj and Nixon 2006a; *Economist* 2007). This was especially the case in the metropolitan areas of California, for example, where house prices had risen rapidly and then suffered a precipitous decline (Immergluck 2008). As reset deadlines loomed and arrived, sub-prime mortgagors were unable to remortgage to either reduce the interest rates payable on their loans, or release equity from their homes. What had once appeared as responsible and entrepreneurial forms of financial self-discipline, making possible owner-occupation and the freedom and security that follows from housing and housing wealth, now exploded into repayment obligations that could not be met and into stark insecurities.

The Practice and Politics of Forbearance

Encouraged by key Congressional figures and by activist campaigns in those areas hardest hit by foreclosure, Federal and state support for forbearance in sub-prime mortgages has, explicitly or otherwise, appeared as the most just and progressive political response to the crisis. The common sense representation of sub-prime that has taken hold in the wake of the crisis rendered the abandonment of delinquent mortgagors politically problematic for even the Bush administration, and also provides the basis for activism that targets assistance for the victims of the crisis. Now, widespread forbearance is certainly necessary in order to prevent huge numbers of sub-prime borrowers from losing their homes. But, as I will show in this section, the politics of forbearance is nonetheless deeply ambivalent within the government of sub-prime and of the mass mortgage market more broadly. On the one hand, forbearance suspends the norm of foreclose and punish, and thereby opens-up political space for disagreement over the merit or otherwise of making borrowers solely responsible for the reproduction of mortgage loans into the future. On the other hand, however, borrower responsibility for credit obligations continues to be normalised through the legal, calculative and self-disciplinary form taken by presently selective forbearance arrangements, and the political prospects for co-responsibility between lender and borrower are simultaneously closed-down.

Forbearance programmes and campaigns

At the time of writing in January 2009, the Federal programmes that have been initiated in the last eighteen months or so in support of forbearance echo the New Deal legislation of the early 1930s that created both the FHA and the Home Owner's Loan Corporation (HOLC). On that occasion it was the purchase of troubled mortgages from lenders by the HOLC that was pivotal to state-orchestrated forbearance (Crossney and Bartelt 2006). But, with policy-makers conscious of so-called 'moral hazard' and of providing assistance to lenders that they deem to be guilty of predatory practices, Federal support for forbearance in the sub-prime crisis has taken a form that is somewhat different to the operations of HOLC during the New Deal. In the words of now former President George W. Bush:

> We've got a role, the government has got a role to play – but it is limited. A federal bailout of lenders would only encourage a recurrence of the problem. It's not the government's job to bailout speculators, or those who made the decision to buy a home they could never afford. Yet there are many American homeowners who could get through this difficult time with a little flexibility from their lenders, or a little help from their government. I strongly urge lenders to work with homeowners to adjust their

mortgages. I believe lenders have a responsibility to help these good people to renegotiate so they can stay in their home (Office of the Press Secretary 2007).

Various legislative programmes and arms of government have been involved in cajoling forbearance. For example, the Mortgage Forgiveness Debt Relief Act of December 2007 suspended the income taxes that apply when debtors benefit from a reduction in their mortgage balance because of forbearance. The Act also included provision for an additional $180 million of Federal funding for not-for-profit credit and housing counsellors who, approved by the Department of Housing and Urban Development (HUD), assist debtors in negotiating forbearance (Weicher 2007: 833). The institutional and legislative focus of Federal support for forbearance in sub-prime mortgages has been, however, the FHA. The centrality of the FHA in Federal forbearance initiatives is, in effect, an attempt to revive and expand a role that it played much more extensively in low-income and high-risk sectors of the mortgage market prior to the boom in sub-prime. Part of HUD, the FHA has, since 1934, insured the loans of those meeting its qualification requirements (Ronald 2008). In the terms of the FHA,'FHA mortgage insurance provides lenders with protection against losses as the result of the homeowner defaulting on their mortgage loans. The lenders bear less risk because FHA will pay a claim to the lender in the event of a homeowner's default'.[2]

Reviving the FHA was somewhat problematic for the Bush administration, as the FHA has long been viewed with suspicion by conservatives who stress that the insurance it provided was milked by uncompetitive lenders. Indeed, many had been more than happy to see its traditional function in support of the margins of the mortgage market displaced by the rise of

[2] http://www.hud.gov/offices/hsg/fhahistory.cfm

the sub-prime sector sector. Nonetheless, the Bush administration settled on the role of the FHA in Federal support for forbearance by the summer of 2007, announcing its headline FHASecure programme at the end of August (Office of the Press Secretary 2007). What marks FHASecure is that FHA insurance is made available to those mortgagors who are classed as delinquent on their existing ARM obligations (Weicher 2007). Prior to FHASecure, the FHA's underwriting criterion prevented insurance of new loans taken out by those already delinquent on their existing mortgage. Under the remit of FHASecure, and according to the FHA (2008), it insured 200,000 mortgages that were refinanced from ARMs to 30-year fixed rate products between September 2007 and May 2008. However, many of those insured under FHASecure during this period were current with their mortgage repayments and, as FHA Commissioner Brian D. Montgomery makes plain, the target of FHASecure in the first instance are the ARMs that he describes as 'exotic loans' and not the sub-prime sector per se (in FHA 2008).

In the wake of FHASecure, the Treasury Department and HUD were also instrumental in encouraging the formation of the HOPE NOW Alliance in mid-October 2007. The Alliance, a joint initiative between mortgage servicers, credit and housing counsellors and an array of primary and secondary mortgage market institutions, came together to 'create a unified, coordinated plan to reach and help as many homeowners as possible'.[3] This 'plan' has subsequently come to include the production of standardised criteria for servicers in their evaluation of a mortgagors' ability to meet repayments on resetting ARMs, thereby enabling priority to be given to those deemed most worthy of forbearance. By February 2008, HOPE NOW claimed that the 26 loan servicers who are Alliance members, and who are responsible

[3] http://www.fsround.org/hope_now/pdfs/AllianceRelease.pdf

for collecting repayments on 90% of the sub-prime loans outstanding, had engaged in forbearance with 545,000 sub-prime mortgagors during the second half of 2007.[4]

Neither FHASecure nor HOPE NOW featured any Federal financial commitment in support of forbearance: the FHA is self-funded through the premiums paid by the mortgagors whose repayments it insures; and the Bush administration's encouragement of HOPE NOW does not appear to have featured direct monetary incentives. Various Congressional legislative proposals to open the Federal coffers in support of forbearance did not gain traction until they became part of the wide-ranging American Housing Rescue and Foreclosure Prevention Act of late July 2008. President Bush's willingness to sign the Act seems to have been a result of the provisions, added at the last minute, to raise the national debt limit in order to temporarily authorise the Treasury Department to bail-out the ailing secondary mortgage market operations of Freddie Mac and Fannie Mae (Herszenhorn 2008). These provisions made possible the 'conservatorship' of Freddie and Fannie in early September. Most notably for us, the Act also authorised the FHA to insure up to £300 billion worth of mortgages which, through forbearance arrangements, have been renegotiated and refinanced. The particular target of the Act are the 'reset risks' of around 400,000 mortgagors who, it has been calculated, are well-placed to refinance from ARMs to 30 year fixed-rate loans. To qualify for FHA insurance, the terms of the refinancing deal must include a reduction in the principal balance of the mortgage to no more than 90% of the home's current value. The original troublesome loan must have been originated on a primary residence on or before January 1st 2008, and total monthly repayments on that loan must be equivalent to at least 31% of monthly household income. Mortgagors are required to demonstrate their ability to meet the

[4] http://www.fsround.org/hope_now/pdfs/10-6FebruaryRelease.pdf

repayments on their new loan through income verification procedures, and to pay an annual insurance fee (1.5% on the remaining balance) (Lieber 2008).

Federal support for forbearance in sub-prime mortgage networks can be seen, then, as part of a wider political questioning of the operation of power relations which constitute borrowers, and not lenders, as solely responsible for the reproduction of debt relations. This is certainly the case for those activist groups that currently campaign for forbearance. Consider, for example, the position of Americans For Fairness in Lending (AFFIL), a national umbrella organisation for local social movements of legal activists, consumer advocates, civil rights campaigners, financial literacy champions, religious groups and so on. AFFIL (No date) casts sub-prime mortgage lenders as predatory, and calls for Federal support for forbearance and the instituting of ‘foreclosure moratoriums’. AFFIL shares this position with ACORN, the largest grassroots community organisation in the US with 400,000 member families across 1,200 chapters in 110 cities. The first of ACORN’s (No date) *10 Ways to Save Our Homes and Neighbourhoods From Predatory Lenders* calls for ‘a one-year moratorium on all foreclosures involving subprime loans that were unaffordable, either from the beginning of the loan or after the rate and payment increased’ (p. 2). Underpinning AFFIL’s position are six ‘Principles of Fairness in Lending’ which centre, respectively, on ‘responsibility, justice, equality, information, accountability, and law & enforcement’.[5] The Principles have proved influential in setting the terrain for recent political debate over the sub-prime crisis, and were endorsed by Barack Obama during his successful 2008 Presidential Election campaign. Under the principle of ‘law & enforcement’ AFFIL state that ‘Our government must establish essential consumer safeguards in the lending marketplace with laws that hold all members of

[5] http://www.affil.org/endorse

the lending industry liable for activities *throughout the life of the loan* and its collection' (*my emphasis*).

In California, so badly effected by the foreclosure crisis, a not dissimilar relationship exists between activists' calls for forbearance and their wider appeal for a degree of co-responsibility between lenders and borrowers. The California Reinvestment Coalition (CRC), representing 250 not-for-profit organisations across the state, has, for instance, issued a number of reports that seek to expose the limited extent of forbearance practiced by loan servicers. Drawing on a snap-shot of the experiences of home and credit counsellors in California during April 2008, the CRC (2008) found that servicers were only marginally more likely to modify mortgages than was the case in late 2007, and were still only very rarely considering a reduction in principal as part of forbearance negotiations. Based on their findings, the CRC recommend that servicers take responsibility and 'step up and take ownership of this crisis and its solutions' (p.7). They also call for the California legislature and Governor Schwarzenegger to take action which has, with campaigning by others such as the Center for Responsible Lending, subsequently been forthcoming. On July 10th 2008, California joined New York in passing modifications to their local foreclosure law, and servicers are now required to exhaust all avenues in order to contact borrowers and negotiate modified terms before foreclosing.[6]

From abandonment to co-responsibility?

[6] On the New York legislation, see the website of the Neighbourhood Economic Development Advocacy Project (NEDAP) at http://www.nedap.org/

Programmes and campaigns in support of forbearance are certainly ensuring that some but far from all sub-prime borrowers are not abandoned in the course of the crisis. Yet, the extent to which the politics of forbearance can establish co-responsibility between lenders and borrowers remains in serious doubt, as the norm of borrower responsibility for outstanding repayments is, at once, challenged and reinforced. The politics of forbearance can be seen, then, to further and continue the legal, calculative and self-disciplinary forces of the government of sub-prime and of the mass mortgage market more broadly.

From the outset, concerns to promote forbearance typically reduce political questions as to whether debtors should be singled out for punishment to legal questions as to appropriate procedures and competing rights. As Rose and Valverde (1998) stress more broadly, while the law in liberal government extends 'the powers of administration over life in the name of reason', it also turns on 'the discourse of rights and legality' that can be 'deployed as principle of critique of the extension of such rationalized powers over life' (p.543). So, for example, legal activists and critical legal scholars tend to draw attention to the way in which the legal processes of foreclosure are not standardised across different states, and do not give a debtor the right to forbearance and the rescheduling of their repayments. Lawyers groups are thus currently campaigning for a national foreclosure bill that would set a uniform procedure for every state, and include rules governing the notice period during which debtors may answer a complaint and the charging of fees (Morgenson and Glater 2008). Legal activists also recommend that those currently facing foreclosure declare themselves bankrupt (e.g. Porter 2007). This is because bankruptcy is covered under Federal law and specialised Federal courts, and under the provisions of Chapter 13 the bankrupt has the right to negotiate a repayment structure with their creditors and, in effect, this halts the foreclosure process. Controversially in this regard, President Bush's reform of bankruptcy law in 2005 included measures which prevent the reduction of the principal on a loan under Chapter 13, thereby making possible only modifications in interest rate and term.

In addition, considerable legal activism has surrounded the manner in which the securitisation of mortgages leads, in effect, to the privileging of the rights of investors as claimants. This issue was also highlighted by an influential International Monetary Fund (IMF) Working Paper from July 2007 that, while praising the capacity of securitisation techniques to 'spread risk' between investors, nonetheless warned that the legal claims of investors and their contractual relations with servicers made forbearance problematic (Kiff and Mills 2007). The typical terms of securitisation contracts protect the interests of investors by severely limiting the number of loans within a securitised pool that can be modified. Legal activists and organisations, such as AFFIL and the National Association of Consumer Advocates, have thus sought to contest the rights of investors and the legal definitions of the responsibilities of different parties in mortgage-backed securities programme in the name of the rights of debtors to forbearance.

Political attempts to forge the co-responsibility of lender and borrower in debt workout are also abridged as attention comes to focus on the calculative measures that determine borrower eligibility and inclusion/exclusion in forbearance. Here the practical ambiguities and political ambivalence of forbearance come quite sharply into view, as calculations written into the FHASecure programme and the provisions of the American Housing Rescue and Foreclosure Prevention Act serve to separate and divide apparently deserving mortgagors from the undeserving. As Andrew Barry (2002) suggests in broad terms, calculative technologies of economy are 'anti-political' in their consequences, seemingly solving disagreements and thereby delimiting scope for 'political action' which otherwise 'opens up the possibility for disagreement' (p. 270). And yet, as Barry also contends, 'the politics of calculation' also matters because calculation is 'inventive' and may not always and everywhere close-down the political (p. 279).

Consider, for example, the way in which John C. Weicher (2007), Director of the Center for Housing and Financial Markets at the Hudson Institute, concentrates his fire on FHASecure's 'unnecessary limitations' which, for him, arise out of FHA's underwriting criteria and risk-based pricing (p. 834). Although FHASecure relaxed the FHA's underwriting standards, the scheme uses a series of risk calculations to determine which delinquent borrowers qualify. Those who are deemed either able to afford their existing ARM after it resets, or who are understood to be especially undeserving as they were unable to meet their repayments even prior to their ARM reset, do not qualify for FHASecure. Similarly, the insurance of new loans under FSASecure is risk-rated, such that borrowers pay differentiated premiums based upon a series of calculations about their likelihood of default. For Weicher, this 'works against the basic purpose of the program' (p. 834). While it is notable, then, that the terms of the American Housing Rescue and Foreclosure Prevention Act reject risk-based pricing in favour of a flat-rate premium, this was opposed by the leadership of the FHA before the legislation passed into law.

Finally, and perhaps ultimately, forbearance is necessarily ambivalent politically because it constitutes the co-responsibility that may or may not emerge between lender and debtor as an exceptional suspension of disciplinary norms. Once undertaken, forbearnance reassembles the borrower as a responsible and self-disciplinary subject. In the sub-prime crisis and the wider foreclosure crisis centred on ARMs, forbearance becomes an act undertaken in the name of those who were typically not guilty of imprudence but who were the victims of highly dubious lending and broking. Saving sub-prime borrowers from foreclosure becomes, in turn, linked to the wider benefits of reducing pressures on a housing market that is already experiencing sharp price falls, and on a mortgage market where 'bad debts' undercut the availability of credit more broadly.

Seen in these terms, there is clearly a sense in which the politics of forbearance is framed by the exercise of biopower and the government of the population, a politics in which issues of individual conduct closely interconnect with national issues. It follows that, once the sub-prime sector has been regulated and there are no more victims of predatory lending, then normal service for households, neighbourhoods and the national economy can be resumed. In the words of Ben Bernanke (2008), 'Reducing the rate of preventable foreclosures would promote economic stability for households, neighbourhoods, and the nation as a whole' (p. 4). Once normal service is resumed, foreclosure and growing indebtedness will, it is assumed, once again be issues for which self-disciplined individuals are solely responsible. Even what are apparently the most radical forbearance proposals and policies are time-limited. Ultimately, lenders and servicers continue in large part to retain discretion over the form that forbearance takes and, once negotiated, responsibility for keeping up repayments falls squarely on the shoulders of the borrower.

Concluding Remarks

To summarise, foreclosure and forbearance give rise to significant questions about the production and reproduction of sub-prime mortgage debt through disciplinary and governmental power relations, questions that are neglected in dominant post-crisis representations of sub-prime. In addressing these questions, I have taken inspiration from the later writings of Foucault to situate foreclosure and forbearance within an understanding of the government of sub-prime which does not simply assume that an absence of Federal regulation rendered sub-prime ungoverned and unauthorised. Prior to the crisis, as has been shown here, sub-prime was able to materialise as a legitimate and highly profitable sector of the market precisely because of the legal, disciplinary, calculative and self-disciplinary apparatus that it shared with the mainstream in a mass market.

Although my motivations in offering such a reading of the government of sub-prime have been analytical and conceptual, they have also been political. As I have argued elsewhere (Langley 2008a), simply casting the current crisis as erupting out of the specific and exceptional problems of what Rob Aitken (2006) characterizes as 'the fringes of finance' has detrimental political consequences: the mainstream of 'prime' finance is secured, and political space for the pluralistic and critical questioning that is essential for the emergence of a genuinely democratic and inclusive finance is shut-down. In this vein, then, I have shown here that taking seriously the disciplinary and governmental power relations which produce and sustain sub-prime has important ramifications for how we might understand forbearance as an apparently progressive response to the crisis. Despite the leniency, empathy and egalitarianism that 'forbearance' implies, it is nonetheless deeply ambivalent in political terms and does not simply open-up space for disagreement over whether borrowers should be solely responsible for their sub-prime mortgages into the future. Forbearance also closes-down the prospects for co-responsibility between lenders and borrowers beyond immediate debt rescheduling, and reinforces the legal, calculative and self-disciplinary operation of power in mortgage markets. For those mortgagors who are currently facing foreclosure, then, forbearance may enable them to stay in their homes. The importance of forbearance, of making legal challenges to the foreclosure rights of lenders and of contesting calculations that create divisions between deserving and undeserving debtors, for example, should certainly not be dismissed as the crisis continues to unfold. Yet, it should also be remembered that the politics of forbearance certainly does not guarantee that a lender or servicer will take responsibility if and when, at some point in future years, a sub-prime mortgagor's renegotiated and high-interest obligations once again become repayments that cannot be met.

Bibliography

ACORN, no date, *10 Ways to Save Our Homes and Neighbourhoods From Predatory Lenders* http://www.acorn.org/fileadmin/ACORN_Reports/2007/10_Point_Forclosure_HALF_PG.pdf

Aitken R, 2006 "Capital at its fringes" *New Political Economy* **11**(4) 479-98

Americans For Fairness in Lending, no date, *Neighbourhood and Individual Impact of the Subprime Mortgage Lending Crisis: A Reporter's Guide* http://www.affil.org/uploads/V3/KC/V3KCA0F5oNW5cKKgzXZscw/AFFIL-Reporters-Guide.pdf

Bajaj V, Grynbaum, M.M, 2008 "About 1 in 11 mortgageholders face loan problems" *New York Times* 6 June, online edition

Bajaj V, Nixon R, 2006a "Re-financing, and putting off mortgage pain" *New York Times* 23 July, online edition

Bajaj V, Nixon R, 2006b "Subprime loans going from boon to housing bane" *New York Times* 6 December, online edition

Barry A, 2002 "The anti-political economy" *Economy and Society* **31**(2) 268 - 84

Becker J, Stolberg S, Labaton S, 2008 "White House philosophy stoked mortgage bonfire" *New York Times* 21 December, online edition

Bernanke B, 2008 "Speech at the Independent Community Bankers of America Annual Convention, Orlando, Florida, March 4, http://www.federalreserve.gov/newsevents/speech/bernanke20080304a.htm

Burton D, 2008 *Credit and Consumer Society* (Routledge, London)

California Reinvestment Coalition, 2008 *The Continuing Chasm Between Words and Deeds III: Lenders Failure to Forestall Foreclosure at Odds with Public Pronouncements*, http://www.calreinvest.org/system/assets/156.pdf

Clark A, 2008 "Welcome to sub-prime capital, USA" *The Guardian* 28 July, page 23

Cowan A.M, Cowan C.D, 2004 "Default correlation: An empirical investigation of a subprime lender" *Journal of Banking and Finance* **28**(4) 753-771

Crossney K.B, Bartelt D.W, 2006 "The legacy of the Home Owner's Loan Corporation" *Housing Policy Debate* **16**(3/4) 547-574

Deleuze G, 1992 "Postscript on the societies of control" *October* **59** 3-7

Driver F, 1993 *Power and Pauperism: The Workhouse System, 1834-1884* (Cambridge University Press, Cambridge)

The Economist 2007 "Cracks in the façade", 22 March, online edition.

The Economist 2008 "Map of misery", 8 May, online edition.

Edmistow K.D, Zalneraitis R, 2007 "Rising foreclosures in the United States: A perfect storm" *Economic Review* **92**(4) 115-146

FHA 2008 *News Release: Bush Administration's FHASecure Refinances 200,000th Mortgage for American Families*, http://portal.hud.gov/portal/page?_pageid=73,1828515&_dad=portal&_schema=PORTAL

Foucault M, 1979 "On Governmentality" *Ideology and Consciousness* **6** 5-22

Foucault M, 2003 *Abnormal, Lectures at the Collège de France, 1974-5* (Picador, New York)

Foucault M, 2004 *Society Must Be Defended, Lectures at the Collège de France, 1975-6* (Penguin, London)

Foucault M, 2007 *Security, Territory, Population, Lectures at the Collège de France, 1977-8* (Palgrave, Basingstoke)

Gelphi R-M, Julien-Labruyère F, 2000 *The History of Consumer Credit: Doctrines and Practices* (MacMillan, Basingstoke)

Grey C, 1997 "Suburban subjects: financial Services and the New Right", in *Financial Institutions and Social Transformations* Eds D Knights, T. Tinker (MacMillan, Basingstoke) pp 47-67

Herszenhorn D.M, 2008 "House passes Housing Bill after Bush says he will sign it' *New York Times* 24 July, online edition.

Immergluck D, 2008 "From the subprime to the exotic: Excessive mortgage market risk and foreclosures" *Journal of the American Planning Association* 74(1) 59-76

Kiff J, Mills, P., 2007 *Money For Nothing and Checks for Free: Recent Developments in U.S. Subprime Mortgage Markets*, IMF Working Paper, WP/07/188, July, (International Monetary Fund, Washington D.C)

Langley P, 2008a *The Everyday Life of Global Finance: Saving and Borrowing in Anglo-America* (Oxford University Press, Oxford)

Langley P, 2008b "Sub-prime mortgage lending: a cultural economy" *Economy and Society* **37**(4) 469-494

Lemke T, 2003 "Comment on Nancy Fraser: rereading Foucault in the shadow of globalization" *Constellations* **10**(2) 172-179

Leyshon A, Thrift N, 1999 "Lists come alive: electronic systems of knowledge and the rise of credit scoring in retail banking" *Economy and Society* **28**(3) 434-466

Lieber R, 2008 “Housing Bill has something for nearly everyone” *New York Times* 25 July, online edition

Marron D, 2007 “Lending by numbers: credit scoring and the constitution of risk within American consumer credit” *Economy and Society* **36**(1) 103-133

Morgenson G, Glater J.D, 2008 “Foreclosure machine thrives on woes” *New York Times* 30 March, online edition

Office of the Press Secretary, 2007 *New Steps to Help Homeowners Avoid Foreclosure, Presdient Bush Discusses Homeownership Financing,* http://www.whitehouse.gov/news/releases/2007/08/20070831-4.html

O’Malley P, 2004 *Risk, Uncertainty and Government* (Glass House, London)

Porter K.M, 2007, “Misbehavior and mistake in bankruptcy mortgage claims” *University of Iowa Legal Studies Research Paper,* Number 07-29, November.

Ronald R, 2008 *The Ideology of Home Ownership: Homeowner Societies and the Role of Housing* (Palgrave, Basingstoke)

Rose N, 1996, “Governing “advanced” liberal democracies”, in *Foucault and Political Reason: Liberalism, Neoliberalism, and the Rationalities of Government* Eds A Barry, T Osbourne, N Rose (University of Chicago Press, Chicago, IL) pp 37-64

Rose N, Valverde M, 1998, “Governed by law?” *Social & Legal Studies* **7**(4) 541-551

Rushton E.W, 2007, *Testimony of Emory W. Rushton, Senior Deputy Comptroller and Chief National Bank Examiner, Office of the Comptroller of the Currency, at Mortgage Market Turmoil: Causes and Consequences,* Hearing of Senate Committee on Banking, Housing, and Urban Affairs, 22 March, http://banking.senate.gov/index.cfm?Fuseaction=Hearings.Detail&HearingID=254

Smith S, 2008, “Owner occupation: at home with a hybrid of money and materials” *Environment and Planning A* **40** 520-535

Sullivan T.A, Warren E, Westbrook J.L, 1989 *As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America* (Oxford University Press, Oxford)

Sullivan T.A, Warren E, Westbrook J.L, 2000 *The Fragile Middle Class: Americans in Debt* (Yale University Press, New Haven, CT)

Weicher J.C, 2007, “Focus on the problem: subprime borrowers in trouble” *Housing Policy Debate* **18**(4) 830-836

Wyly E.K, Atia M, Foxcroft H, Hammel D.J, Phillips-Watts K, 2006, “American home: predatory mortgage capital and neighbourhood spaces of race and class exploitation in the United States” *Geografiska Annaler* **88**(2) 105-132

Wyly E, Atia, M, Lee E, Mendez P, 2007, “Race, gender and statistical representation: predatory lending and the US community reinvestment movement” *Environment and Planning A* **39** 2139-2166.