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Forty Acres and a Mule: America's Bill for Reparations Is Long Past Overdue.

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COMMENTS

FORTY ACRES AND A MULE: AMERICA'S BILL FOR REPARATIONS IS LONG PAST OVERDUE

HAL CLAY*

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* J.D. Candidate at St. Mary's University School of Law, May 2022. B.A. University of Texas San Antonio, 1992. I write this piece in an increasingly hostile American environment, when even Truth is questioned or outright denied by some if the narrative does not further some political end. There are those who actively seek to eliminate all but a whitewashed version of American history, to eradicate any teaching of how American racism has shaped public policy in our classrooms, and to vilify those who desire to seek a more perfect union by thoroughly examining our past with a critical eye. I want to thank my parents for instilling in me from a very young age the desire to fight injustice in any form, always encouraging me to speak up for those who could not speak for themselves, and to my family who gave me their wholehearted support. I am also most grateful for my wife, whose unwavering love and patience I could not do without. I humbly dedicate this paper to the countless millions whose enslaved lives were a source of great pain and anguish, and to those who lived through and fought segregation, whose stories of survival and perseverance serve as a reminder lest we forget.

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INTRODUCTION

*To accept one's past—one's history—is not the same thing as drowning in it; it is learning how to use it. An invented past can never be used; it cracks and crumbles under the pressures of life like clay in a season of drought.*¹

*A. The Justification For Timely Reparations Stems From The Historic Injustices Perpetrated On Black Americans*²

The idea that the commodification, suffering, and forced labor of enslaved Africans is what made the United States a wealthy and powerful nation is discomfoting; it makes many uneasy, bitter, or even hostile.³ It is an idea that is antithetical to the American values enshrined in our nation's founding documents.⁴ Yet, Black labor and suffering created the United States as it exists today.⁵ When considered together with the historical suffering and harm Black people living in America have faced in issues of housing, education, voting, health, wealth distribution and criminal justice, there can no longer be any denial that the United States owes Black Americans a monumental debt.⁶ America has never

1. JAMES BALDWIN, *THE FIRE NEXT TIME* 89–90 (1962).

2. For purposes of this comment, I will use the term “Black Americans” to refer to three distinct groups: (1) African Americans, or those Americans whose ancestors were brought to the New World as chattel slaves; (2) African-Americans, where the hyphen indicates more recent ties to the continent; and (3) individuals whose family ties to the United States began after the end of the Civil War, and who may not necessarily have been enslaved.

3. See generally Nikole Hannah-Jones, *Our Democracy's Founding Ideals Were False When They Were Written. Black Americans Have Fought to Make Them True*, N.Y. TIMES (Aug. 14, 2019), <https://www.nytimes.com/interactive/2019/08/14/magazine/black-history-american-democracy.html> [https://perma.cc/9J37-XUKA] (“It seemed that the closest thing [B]lack Americans could have to cultural pride was to be found in our vague connection to Africa, a place we had never been . . . honor in being an American felt like a marker of [our] degradation, [our] acceptance of our subordination . . . [but] our people's contributions to building the richest and most powerful nation in the world were indelible, that the United States simply would not exist without us.”).

4. See generally U.S. CONST. pmb. (declaring the founding values of the United States).

5. See generally Hannah-Jones, *supra* note 3 (referring to the notion that without Black labor, the United States would not be the economic world power that it is today. This country was built on the backs of Black people).

6. See generally Shomari Wills, *Should America Pay Slavery Reparations?*, INVESTOPEdia, <https://www.investopedia.com/should-america-pay-slavery-reparations-5080415>

officially apologized to Black Americans for slavery, and the subsequent harmful policies and laws enacted against them and on them which have their roots inextricably established in racism.⁷ Whenever Black people collectively and specifically speak to the realities of anti-Blackness, there is often outrage and backlash from offended people who would rather pretend that racism does not exist, yet have it continue unabated and most importantly, unacknowledged as “racism.”⁸ Acknowledging racism would necessitate people to actively work at eradicating it, or at the very least, to call it out when they see it.⁹ The events of the 2020 murders of Ahmaud Arbery in Brunswick, GA, Breonna Taylor in Louisville, KY, George Floyd in Minneapolis, MN, and the shooting of Jacob Blake in Kenosha, WI, have coalesced, bringing to light something that Black Americans have known since before the formation of this country: that there are, and have always been, two Americas.¹⁰

There is an existing disparity between what the Founding Fathers wrote when declaring independence from Britain’s King George II—“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness”—and the historic experience of Black Americans.¹¹ After the American Revolution, those

[<https://perma.cc/K8UR-5UTL>] (last updated Sept. 25, 2021) (establishing the “[e]ffect on the wealth and economic standing of Black Americans of generations of enslavement—and the structural racism following emancipation—has never been fully mitigated and exists to this day.”).

7. See generally Patrick Rael, *The Distinction Between Slavery and Race in U.S. History*, BLACK PERSP. (Nov. 27, 2016), <https://www.aaihs.org/the-distinction-between-slavery-and-race-in-u-s-history/> [<https://perma.cc/SZS5-86DV>] (asserting “race is woven into the very fabric” of the U.S. government).

8. See generally Hannah-Jones, *supra* note 3 (“Anti-black racism runs in the very DNA of this country, as does the belief, so well articulated by [President] Lincoln, that [B]lack people are the obstacle to national unity.”).

9. *Being Antiracist*, SMITHSONIAN: NAT’L MUSEUM OF AFR. AM. HIST. & CULTURE, <https://nmaahc.si.edu/learn/talking-about-race/topics/being-antiracist> [<https://perma.cc/6BG5-ALMG>] (“To create an equal society, we must commit to making unbiased choices and being antiracist in all aspects of our lives.”).

10. See Jorge L. Ortiz, *‘It’s Nothing but Pain’: The Latest on the Cases of Violence Against Black People that Sparked America’s Racial Reckoning*, USA TODAY (Sept. 9, 2020, 6:01 AM), <https://www.usatoday.com/story/news/nation/2020/09/09/george-floyd-breonna-taylor-jacob-blake-what-we-know/5753696002/> [<https://perma.cc/U4NC-F75V0>] (referring to the murders and shootings as “a series of high-profile incidents of violence against Black people . . . that have prompted widespread protests and a national discussion about systemic racism.”).

11. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

same Founding Fathers wrote that the Constitution promises to its citizens to “form a more perfect union . . . and secure the blessings of liberty to ourselves and our posterity,” but failed to adequately address whether those same promises “to ourselves” applied to Black Americans.¹² At the time of its founding, slavery was legal in every state in the Union because “[p]eople of African descent were as important in building northern cities such as New York as they were in producing the cash crops on which the southern economy depended.”¹³ The newly formed Federal government and other large domestic institutions were participants and stakeholders in the practice of enslavement.¹⁴ “The savings produced by using enslaved workers spurred economic growth for the country as a whole—and slave owners, particularly—while impoverishing generations of Blacks by depriving them of fundamental rights, freedom, and compensation.”¹⁵

Make no mistake: race played a pervasive role in the drafting of the Constitution.¹⁶ “When delegates to the Constitutional Convention met in Philadelphia in 1787 [. . .] there were nearly 700,000 [enslaved persons] living in the United States, worth an estimated \$210 million in today’s dollars.”¹⁷ The infamous Three-Fifths Compromise did not even attempt to address the inhumanity of slavery.¹⁸ The Founding Fathers were not concerned whether African slaves were entitled to the benefits of the promises enshrined in the Preamble, but rather whether slaves should count as a whole person for purposes of taxation and representation:

12. U.S. CONST. pmb1.

13. Rael, *supra* note 7.

14. *See generally id.* (representing that powerful elites depended completely on slavery for their ability to profit).

15. *See* Wills, *supra* note 6 (“Slavery helped the United States become a formidable economic power. It had the opposite effect on enslaved people and their descendants, stripping them of wages, property, civil rights, and freedom.”).

16. *See* Rael, *supra* note 7 (reflecting on how race was a critical component to get parties to agree on the Constitution).

17. Michael Coard, *Coard: Last Enslaved Alive When Grandparents Were Born*, PHILA. TRIB. (July 8, 2019), https://www.phillytrib.com/commentary/michaelcoard/coard-last-enslaved-alive-when-grandparents-were-born/article_40805020-7c1f-5e2f-a791-f3ad4a0945a4.html [<https://perma.cc/3NZ4-27UU>].

18. *See* Rael, *supra* note 7 (explaining how the founding fathers had difficulty balancing the persistence of including slavery in their new constitution which purported to be founded on the principles of universal human liberty. Most of the Founding Fathers were either slave owners that inherited their slaves and property or were willing to go along with the others for the sake of unification).

Much has been said of the impropriety of representing men who have no will of their own . . . They are men, though degraded to the condition of slavery. They are persons known to the municipal laws of the states which they inhabit, as well as to the laws of nature. But representation and taxation go together . . . Would it be just to impose a singular burden, without conferring some adequate advantage?¹⁹

In its original iteration, the U.S. Constitution contained language that allowed the government to tax people that were trafficked via the transatlantic slave trade.²⁰ Spanning two separate periods, 1798–1802 and 1813–1816, the U.S. Treasury reported slave taxes as one of its chief sources of revenue.²¹ States were able to collect 2% per capita of each slave's monetary value.²²

Many multinational corporations that exist today had a hand in owning slaves in their early history.²³ Cotton commodities, plantation shares, and bonds are all examples of antebellum-era items available on the New York Stock Exchange.²⁴ Notable universities such as Harvard, Yale, and Princeton were built by slaves and funded the slave trade.²⁵

19. 2 THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 237 (Jonathan Elliot ed., 2d ed., Philadelphia, J.B. Lippincott 1891).

20. See Wills, *supra* note 6 (referencing copious revenue realized by the U.S. government through taxation of people as though they were property).

21. See *id.* (“From 1798 to 1802 and 1813 to 1816, the United States Treasury collected taxes on slaves as one of its chief sources of revenue, along with taxes on land and houses.”).

22. See *id.* (“Many slave states collected as much as 2% of the valuation of each enslaved person per year as a tax.”).

23. See *id.* (alleging that multinational corporations such as Bank of America, J.P. Morgan Chase and Aetna, along with others, owned slaves in early history); see also Vernellia Randall, *Shocking List of 10 Companies that Profited from the Slave Trade*, RACE, RACISM & THE L. (Aug. 31, 2013) <https://www.racism.org/index.php/articles/law-and-justice/citizenship-rights/117-slavery-to-reparations/reparations/1697-reparations1001> [https://perma.cc/MG6V-2NHQ] (illustrating that these companies have begun to address their histories in the slave trade. Additionally, suggesting the companies may be able to give back to the African American community by “donating to HBCUs, investing in minority businesses, offering more minority scholarships, or launching initiatives to increase their number of minority employees.”).

24. See Wills, *supra* note 6 (illustrating the numerous different business that benefited from slave labor).

25. See *id.* (indicating the roots of racism run throughout higher education: a supposed haven of greater thinking).

Despite being set free during the Civil War, nearly one million African Americans were left impoverished after they were emancipated.²⁶ Fountain Hughes was born a slave, and in 1949 was recorded sharing his firsthand observation of what emancipation was like:

When they told me we were free we didn't have nowhere to go. We didn't have no property; we didn't have no home. We was like the cattle; we was just turned out. We had been slaves all of our lives. My mother was a slave, my sisters was slaves, father was a slave. But after freedom you know colored people didn't have nothing.²⁷

Facing countless struggles, Blacks were forced to sharecrop to get by.²⁸ The wealth gap between whites and newly emancipated Blacks became generational through laws passed in the Southern states “that mandated segregation, disenfranchisement, and economic oppression for the next 100 years.”²⁹ This formed the beginning of the racial wealth gap that plagues our country today.³⁰ The North was just as complicit.³¹ Northern Industrialists realized that Southern cotton and tobacco were vital to the post-Civil War economy and allowed the Southern states to rise from the ashes of the antebellum, rebuilding their society much as it was before the war.³² Both the North and South needed the agricultural products of the South, which had relied previously on slave labor.³³ This was

26. *See id.* (asserting freedom did not provide recently emancipated slaves the ability to support themselves and many faced starvation and homelessness).

27. *Driving While Black: Race, Space and Mobility in America* (Public Broadcasting Service Oct. 13, 2020).

28. *See Wills, supra* note 6 (explaining how even after 1865, many free slaves were forced to go back to work in order to survive).

29. *See id.* (contending the financial repercussions of slavery are not limited to the era, but rather continue to be felt today).

30. *See id.* (highlighting the refusal to close the gap between Blacks and whites created by enslavement and by racist laws passed almost immediately after slavery to limit Blacks' access to benefits such as education).

31. *See generally id.* (identifying Black laborers also built much of the infrastructure in the North, including New York City, the White House, and even the Capitol).

32. *See generally* Ta-Nehisi Coates, *The Case for Reparations*, ATL. (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/> [<https://perma.cc/SUK5-FA2J>] (describing the dependence on slave society that extended North. “Whoever says Industrial Revolution . . . says cotton.” Further, even though the Republicans of the North attempted to reconstruct the South after the Civil War, they were pushed back by Southerners claiming the “Redemption” campaign).

33. Zoe Thomas, *The Hidden Links Between Slavery and Wall Street*, BBC (Aug. 28, 2019), <https://www.bbc.com/news/business-49476247> [<https://perma.cc/5EHM-TN6C>] (asserting

replaced by sharecropping, which quickly evolved into a system that created a never-ending cycle of indebtedness.³⁴ One critical issue that was central to post Civil War America was the problem of reintegration of Black people's labor to the American economy.³⁵ Resumption of the cotton industry was absolutely critical to the re-emergence of the United States as a World Power.³⁶ Before the Civil War the United States had risen to become the leading producer of cotton in the world with the invention of the cotton gin.³⁷ Based on census records at the time, the number of slaves increased by 3 million between 1800–1860.³⁸ “During that same period, the United States per capita GDP more than doubled, going from \$58 (\$1540 in 2019 dollars) in 1800 to \$125 (\$3243) in 1860.”³⁹ At this certain point in history, Natchez, Mississippi had the most millionaires than any other city in the world, due to its ability to produce the greatest amount of cotton.⁴⁰ Conversely, the Black population that currently lives in Natchez descended from enslaved workers and still live in poverty.⁴¹ Enslaved Black workers were responsible for nearly half of the workforce in the South, making them

historical reliance on slave labor that benefited U.S. industries such as textile mills, railroads, and even financial institutions).

34. See generally *Driving While Black: Race, Space and Mobility in America*, *supra* note 27 (discussing the cycle of debt is based on Black people being kept in place, often working the very same land they worked as slaves. White planters continued to exploit their Black labor, through utilizing crop liens and restricting movement, as they needed the labor to stay and work the land. Sharecropping ensured that free Blacks had to go to these white planters and merchants to gain access to the tools they needed to plow and seeds to plant to harvest. This resulted in Blacks becoming trapped in an unending cycle of debt).

35. See Edward Baptist, *Without Slavery, Would The U.S. Be The Leading Economic Power?*, N.H. PUB. RADIO, (Nov. 19, 2014, 12:12 PM), <https://www.nhpr.org/post/without-slavery-would-us-be-leading-economic-power#stream/0> [<https://perma.cc/EP26-G4X8>] (“As a system, slavery had never adapted or changed to thrive in the new industrial economy—let alone to play a premier role as a driver of economic expansion—and had been little more than a drag on the explosive growth that had built the modern United States.”).

36. See *id.* (illustrating the significant impact the cotton industry made nationwide and globally).

37. See Wills, *supra* note 6 (including the invention of the cotton gin by Eli Whitney in 1794, enabled the Southern states to power the economic rise of the United States over the next century).

38. See *id.* (indicating that the cotton gin allowed America to capitalize on slave labor to become the economic powerhouse known to the world today).

39. *Id.* (correlating the growth of slave labor to economic growth).

40. See *id.* (explaining the transfer of wealth that slave owners benefited from during the antebellum era).

41. See *id.* (illustrating the lingering effects slavery has left on the Black population).

partially responsible for the tremendous wealth experienced at that time.⁴² However, “[u]nlike the White labor pool, these workers received no wages or profit-sharing, and lived and worked in bondage.”⁴³ Cotton, a major player in the U.S. economy accounting for at least 5% of the GDP, relied on plantation slave labor to turn a profit.⁴⁴ Furthermore, all productivity derived from slave labor accounted for up to 50% of the GDP.⁴⁵

Segregation was legalized if not overtly blessed by successive Republican administrations, and the highest court in the land held that “separate but equal” was a viable solution.⁴⁶ The many social, economic and political advances achieved through Reconstruction and implemented to bring about social and economic justice and parity for former slaves, disappeared.⁴⁷ Segregation was legal nationwide, which led to Jim Crow legislation being passed in the Southern states, while “in the North, legislatures, mayors, civic associations, banks, and citizens all colluded to pin black people into ghettos” by redlining,⁴⁸ limiting movement, restricting access to good paying jobs, schools, labor unions, and brutal policing in the streets for the next 70 years.⁴⁹

It is impossible to separate the legal, social, economic, political and health policies of the United States without recognizing these policies were based solely on race.⁵⁰ The Anti-Defamation League defines racism

42. *See id.* (asserting the enslaved labor force significantly benefited US economy).

43. *Id.*

44. *See id.* (differentiating between worker conditions and slave condition).

45. *See id.* (indicating that the United States would not be able to prosper without slave labor). *See generally* Baptist, *supra* note 35 (“Newspapers dripped with speculations in land and people and the commodities they produced; dramatic changes in how people made money and how much they made; and the dramatic violence that accompanied these practices. The accounts of northern merchants and bankers and factory owners showed that they invested in slavery, bought from and sold to slaveholders, and took slices of profit out of slavery’s expansion.”).

46. *See Plessy v. Ferguson*, 163 U.S. 537, 544 (1896) (extending states’ ability to keep races segregated and providing inferior protections to non-white citizens).

47. *See generally Driving While Black: Race, Space and Mobility in America*, *supra* note 27 (promulgating equality. During Reconstruction, about 2,000 Black men served in government positions, including two senators and six congressmen).

48. *See Coates*, *supra* note 32 (stressing businesses discriminated against newly free Black Americans by awarding them the worst jobs and worst wages).

49. *See Wills*, *supra* note 6 (recognizing that in more than 100 years of discriminatory policies after Emancipation, these laws and policies worked effectively to prevent Blacks from fully closing the racial income and wealth gap that originated with slavery).

50. *See* David R. Williams & Toni D. Rucker, *Understanding and Addressing Racial Disparities in Health Care*, 21. 4 HEALTHCARE FIN. R. 75 (2000) (“Thus, racial and ethnic

as the “marginalization, exclusion, and/or oppression of people of color based on a socially constructed racial hierarchy that perpetrated White privilege”⁵¹ White identity in the United States was historically constructed in such a way to claim or monopolize access to certain resources and opportunities.⁵² By creating that hierarchy and creating policies of exclusion and segregation, whites have been able to reinforce in the American psyche that white people enjoy certain superiority, freedoms, and exclusive access, privileges that other ethnic groups don’t.⁵³ Even poor white people felt and thought that they were better.⁵⁴ There is no doubt that there has been much progress made in regard to racial equality, despite the many legal, cultural, educational and economic obstacles to overcome.⁵⁵ One needs to only look to a Thurgood Marshall, Michael Jordan, Colin Powell, Oprah Winfrey and Barack Obama as easily identifiable examples.⁵⁶ However, in the 21st century, despite the achievements of these and many other notable Black Americans, they remain the exception rather than the rule.⁵⁷ Wealthy and successful Blacks didn’t get a pass from Jim Crow; well-to-do Blacks

differentials in the quantity and quality of care are a likely contributor to racial disparities in health status.”).

51. Nicole Chavez, *Anti-Defamation League Revised its Definition of Racism Because it was ‘So Narrow’*, CNN, <https://www.cnn.com/2022/02/04/us/anti-defamation-league-racism-definition/index.html> [<https://perma.cc/TM85-SMHS>] (last updated Feb. 4, 2022, 3:25 PM) (defining racism as it relates to white privilege).

52. See generally MICHAEL ERIC DYSON, *TEARS WE CANNOT STOP: A SERMON TO WHITE AMERICA*, ST. MARTIN’S PRESS 1, 65–66 (2017).

53. See generally FRANCIS E. KENDALL, *UNDERSTANDING WHITE PRIVILEGE*, AM. UNIV. (2002) <https://www.american.edu/oc/counseling/upload/understanding-white-privilege.pdf> [<https://perma.cc/NH2S-3NGM>] (conceding that white Americans enjoy inherent privileges that Black Americans do not).

54. See Ella Myers, *Beyond the Wages of Whiteness: Du Bois on the Irrationality of Antiracism*, SOC. SCI. RSCH. COUNCIL (Mar. 21, 2017), <https://items.ssrc.org/reading-racial-conflict/beyond-the-wages-of-whiteness-du-bois-on-the-irrationality-of-antiracism> [<https://perma.cc/526S-974W>] (“Du Bois famously argues that whiteness serves as a ‘public and psychological wage, ‘delivering to poor whites in the nineteenth and early twentieth centuries a valuable social status derived from their classification as ‘not-[B]lack.’”).

55. See generally KENDALL, *supra* note 53 (recognizing the obstacles which stand in the way of determinative change towards racial equity).

56. See generally *Overcoming Prejudice*, OPRAH.COM, <https://www.oprah.com/oprahshow/overcoming-prejudice/15> [<https://perma.cc/U48V-2VG2>] (describing a study where “admirable [B]lack Americans” were showcased).

57. See generally KENDALL, *supra* note 53 (noting that due to the existing obstacles, privilege continues to favor white Americans at the expense of Black people).

didn't (and don't) get an exemption from racism.⁵⁸ In their article for Catalyst.org, authors Amelia Costigan, Keisha Garnett, and Emily Troiano note that “[m]any of the disparities between Black and White communities in the United States are an outgrowth of our long history of discriminatory and dehumanizing laws and policies that have created and exacerbated inequality in almost every sphere of life”,⁵⁹ adding that “[t]hese laws and policies originated with slavery and continued through segregation and Jim Crow, and are built into the fundamental structures of our societies—our systems of labor, housing, education, voting, healthcare, and justice.”⁶⁰ These systemic disparities form the roots of institutionalized racism.⁶¹ To remove these barriers, a full understanding of how racism was built into our social structure is critical, without which, it is impossible to quantify its long-term effects.⁶² It is only through acknowledging that the root of these myriad issues descends directly *from* slavery can the United States reconcile and begin to make long overdue amends.⁶³ These amends are owed to arguably the most marginalized of her citizens, the direct descendants of her African slaves, and to Blacks who immigrated to the U.S. after the Civil War, who were similarly subjected to and equally marginalized by these same racist policies.⁶⁴ Slavery's role in building the economic power of the United States along with its lingering social hierarchy provides compelling evidence of the need for an apology and reparations.⁶⁵

Make no mistake: direct monetary reparations for slavery paid to current Black Americans is the wrong ethical and moral answer, and the

58. *See generally id.* (“We are able, almost always, to forget that everything that happens in our lives occurs in the context of the supremacy of whiteness.”).

59. *See* Amelia Costigan et al., *The Impact of Structural Racism on Black Americans*, CATALYST (Sept. 30, 2020), <https://www.catalyst.org/research/structural-racism-black-americans/> [<https://perma.cc/6YJU-JHBG>] (“These systems give privileges to White people resulting in disadvantages to people of color.”).

60. *See id.* (illustrating that while individual choices are damaging, racist ideas in government policy have had a widespread impact by threatening the equity of our systems and the fairness of our institutions).

61. *Cf. id.* (noting the depth and depravity of institutionalized racism).

62. *See id.* (explaining that progress requires accountability and acceptance of inherent biases).

63. *See generally id.* (highlighting the varying bases, and effects, that slavery has on the current racial climate).

64. *See generally id.* (explaining that the need to make amends is long standing).

65. *See* Wills, *supra* note 6 (“The history is complicated, but the overall principle is simple: Slavery helped the United States become a formidable economic power.”).

incorrect legal solution for the right question.⁶⁶ The correct legal, ethical, and moral solution is to pay reparations for the *legacy* of slavery, which has affected not only the descendants of African slaves, but all Black Americans, including those of African ancestry whose ancestors were never enslaved.⁶⁷ They also suffered the same legalized discrimination and state-sanctioned brutality, murder, dispossession and disenfranchisement which continued long after the Civil War ended.⁶⁸ That history profoundly handicapped all Black Americans in six distinct areas: (1) limiting access to jobs which paid good wages; (2) restricting access to housing; (3) limiting educational opportunities; (4) disenfranchising Black voters; (5) providing inadequate to no health care; and (6) the overuse of the criminal justice system to suppress Black progress.⁶⁹ America's racial reconciliation must begin now with compensation through reparations, which is rightfully owed for the *legacy* of slavery, and must therefore include Black Americans.⁷⁰ If our truths are indeed self-evident, that all men are truly created equal, then it is imperative to right the wrongs of the past now; the urgency is

66. *But see* Ross Baker, *Reconsider Reparations. We Need Them Morally and Economically, We Can Afford Them*, USA TODAY (June 14, 2020, 6:00 AM) <https://www.usatoday.com/story/opinion/2020/06/14/reparations-right-historic-wrong-slavery-black-americans-column/5327055002/> [<https://perma.cc/4WPR-46WW>] (“So much of what has afflicted this community can be ascribed to one burden that they bear disproportionately: poverty, and without the wherewithal to advance economically.”).

67. *See generally* Margaret Simms, *Say African American or Black, but First Acknowledge the Persistence of Structural Racism*, URB. INST. (Feb. 8, 2018), <https://www.urban.org/urban-wire/say-african-american-or-black-first-acknowledge-persistence-structural-racism> [<https://perma.cc/9WL6-TKW5>] (differentiating between the terms “Black” and “African American.” Some people view “Black” and “African American” interchangeably, but many have strong opinions that “African American” is too restrictive for the current US population. In part, the term African American came into use to highlight that the experiences of the people and their origins in the African continent and their history on the American continent. But recent immigrants from Africa and the Caribbean have different combinations of history and experience, so some have argued that the term “Black” is more inclusive of the collective experiences of the US population. About ten percent of the 46.8 million Black people in the United States are foreign born).

68. *See generally* *Who We Are: A Chronicle of Racism in America*, VIFF (2021), [https://viff.org/Online/default.asp?BOParam::WScontent::loadArticle::permalink=fc11110-who-we-are-a-chronicle-of-racism-in-america&BOParam::WScontent::loadArticle::context_id=\[https://perma.cc/4V3K-3XXY\]](https://viff.org/Online/default.asp?BOParam::WScontent::loadArticle::permalink=fc11110-who-we-are-a-chronicle-of-racism-in-america&BOParam::WScontent::loadArticle::context_id=[https://perma.cc/4V3K-3XXY]) (highlighting the absurdity, and intensity of past racism showcased in the film *Who We Are*).

69. *See, e.g.*, Baker, *supra* note 66 (demonstrating that the first two areas when combined had the negative effect of preventing Black Americans' ability create and accumulate wealth).

70. *See id.* (“[T]he possibility of a single endowment for tens of millions of people no longer seems extravagant at a time when the federal government is shoveling trillions of dollars out the door to sustain a crippled economy.”).

palpable.⁷¹ It is immoral and unconscionable to delay any longer, for if we do, we risk the past continuing to adversely affect America's future.⁷²

I. HISTORY

*The more things change, the more they stay the same.*⁷³

A. There Are Historical Justifications For Reparation

The Oxford dictionary defines reparations as “the making of amends for a wrong one has done, by paying money to or otherwise helping those who have been wronged.”⁷⁴ Often historically, that has meant that defeated nations in war often owed financial compensation to the victorious nations for damages sustained during the war.⁷⁵ After winning independence from Britain, the original thirteen states expanded their territory westward.⁷⁶ With the purchase of the Louisiana Territory from France in 1803, the country more than doubled in size overnight and admitted fifteen new states and territories between 1803 and 1850.⁷⁷ The 1850 Fugitive Slave Act was a legislative compromise designed to appease the Southern States and keep them in the Union.⁷⁸ It was a spectacular failure because of Congress' inability to address both the moral issues of slavery and find a solution that was beneficial to the Southern states.⁷⁹ The 1850 Compromise failed to satisfactorily answer the ethical issues of continuing slavery as a policy and challenged the new

71. *See generally id.* (“Money alone can never be sufficient atonement for slavery; it is a crime for which no living person can be made whole.”).

72. *See generally id.* (highlighting the existing and dire affects that slavery still has on Black Americans).

73. Alphonse Karr, 6 *Les Guêpes* (Jan. 1849).

74. *See Reparation*, OXFORD ENG. DICTIONARY (2020), <https://www.oed.com/view/Entry/162653?redirectedFrom=reparation#eid> [<https://perma.cc/LEA7-M7T7>] (identifying the historical justifications for reparations).

75. *See id.* (recognizing how defeated nations had to pay reparations during times of war).

76. *See* Guillaume Vandenbroucke, *The U.S. Westward Expansion*, 49 INT'L ECON. REV. 81, 81 (2008) (illustrating how U.S. development is attributed to westward expansion).

77. *See* History.com Editors, *Louisiana Purchase*, HIST. (Dec. 2, 2009), <https://www.history.com/topics/westward-expansion/louisiana-purchase> [<https://perma.cc/WZH9-XHYP>] (describing the geographical expansion that resulted from the Louisiana Purchase).

78. *See Driving While Black: Race, Space and Mobility in America*, *supra* note 27 (identifying the reasoning behind the 1850 Fugitive Slave Act).

79. *See* History.com Editors, *Fugitive Slave Acts*, HIST. (Dec. 2, 2009), <https://www.history.com/topics/black-history/fugitive-slave-acts> [<https://perma.cc/GBC4-GCZ9>] (acknowledging the shortcomings of the 1850 Fugitive Slave Act).

country's identity, which was so closely tied to liberty and equality for all.⁸⁰ It was only a decade later when the nation's inability to govern slavery was finally solved by the Civil War.⁸¹ Towards the end of the war, the United States government recognized the need to help the estimated four million former slaves' transition from slavery to freedom, and created the Bureau of Refugees, Freedmen, and Abandoned Lands,⁸² usually referred to as simply the Freedmen's Bureau.⁸³ It was a U.S. government agency from 1865 to 1872, after the Civil War, set up to direct "provisions, clothing, and fuel . . . for the immediate and temporary shelter and supply of destitute and suffering refugees and freedmen and their wives and children."⁸⁴ The idea behind creating this agency, indeed its specific purpose, was to compensate those aggrieved.⁸⁵ Congress renewed the Bureau's charter in 1866, but President Johnson who succeeded Lincoln, steadfastly believed that the work of restoring the Union was complete.⁸⁶ He vetoed the renewal of the charter on the grounds that it interfered with states' rights.⁸⁷ Congress, in turn, overrode

80. See History.com Editors, *Compromise of 1850*, HIST. (Oct. 27, 2009), <https://www.history.com/topics/abolitionist-movement/compromise-of-1850> [<https://perma.cc/US9W-VE2N>] (reporting how the Compromise of 1850 failed to solve the issues surrounding slavery).

81. See Patrick Rael, *Did Abolitionism Cause The Civil War?*, BLACK PERSP. (Aug. 29, 2015), <https://www.aaihs.org/did-abolitionism-cause-the-civil-war/former> [<https://perma.cc/U368-F9PQ>] (suggesting that unlike the rest of the Western Hemisphere, slavery could only end in the United States through a massive war).

82. See History.com Editors, *Freedmen's Bureau*, HIST. (June 1, 2010), <https://www.history.com/topics/black-history/freedmens-bureau> [<https://perma.cc/82HU-EUBH>] (describing the efforts needed to support the new four million citizens).

83. See *id.* (illustrating the resources provided by the Freedmen's Bureau).

84. See Steven F. Miller, *Laws Creating the Freedmen's Bureau*, FREEDMEN AND S. SOC'Y PROJECT, <http://www.freedmen.umd.edu/fbact.htm> [<https://perma.cc/5TFW-NE7A>] (last modified Feb. 4, 2022) (creating a new federal agency to manage the immense challenges posed by admitting four million new citizens. These citizens, for the first time in their lives, were responsible for themselves, but lacking the necessary resources and were vastly ill-equipped to carry on their own).

85. See Angelo R. Guisado, *Reversal of Fortune: The Inapposite Standards Applied to Remedial Race-, Gender-, and Orientation- Based Classifications*, 92 NEB. L. REV. 1, 9 (2014) (understanding that there was a moral imperative to immediately begin fixing the many wrongs brought upon Blacks while enslaved).

86. See *The Freedmen's Bureau*, KHAN ACAD., <https://support.khanacademy.org/hc/en-us/articles/115001870147-How-can-I-cite-material-from-Khan-Academy-> [<https://perma.cc/4V7U-KQ6U>] (noting the differences in belief between the executive and legislative branches).

87. See LLOYD PAUL STRYKER, *ANDREW JOHNSON: A STUDY IN COURAGE*, 263 (Macmillan, 1929) (undermining the Freedmen's Bureau's role, primarily to supervise the relief

the President's veto.⁸⁸ Due to increasing pressure from White Southerners, Congress dismantled the Freedmen's Bureau in 1872.⁸⁹ The Bureau failed to make significant strides towards racial equality or provide long term protection for Blacks, mostly due to the fight between Congress and President Johnson, as well as subpar funding.⁹⁰ The indisputable record shows that Blacks in America were legally, politically, and economically powerless and did not have standing to make a claim for citizenship, much less reparations.⁹¹

The status of all Black Americans was intended to be changed with the adoption of the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution, and the Reconstruction Era attempted to address many disparate social, political, educational and economic issues that Black slaves, who were now free citizens, faced.⁹² The record shows that historically, Blacks have been powerless to make a claim for citizenship, not to mention reparations.⁹³

General William Sherman's Special Field Order No. 15, better known as "40 Acres and a Mule" is perhaps the most frequently cited example

and educational activities for refugees and freedmen, including issuing food, clothing, and medicine. Most upsetting to Johnson was the fact that the Bureau also assumed custody of confiscated lands and property in the former Confederate States, border states, DC, and Indian Territories).

88. See History.com Editors, *supra* note 82 (illustrating the controversy surrounding the Act while going through Congress).

89. See Richard Wormser, *The Rise and Fall of Jim Crow, Jim Crow Stories: Freedmen's Bureau (1865-72)*, THIRTEEN (2002), https://www.thirteen.org/wnet/jimcrow/stories_events_freed.html [https://perma.cc/8Q2A-EJ6R] (depicting how little support there was for the Freedmen's Bureau outside of the radical wing of the Republican party).

90. See *The Freedmen's Bureau*, *supra* note 86 (lamenting the lack of needed support from the national government to ensure Blacks would continue to enjoy what gains were earned in the years immediately following the end of the Civil War).

91. See Jeremy Levitt, *Black African Reparations: Making A Claim For Enslavement And Systematic De Jure Segregation And Racial Discrimination Under American And International Law* 25 S. U. L. REV. 1, 11 (1997) (illustrating that despite legal rights guaranteed with the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments, these rights were more theoretical than actual in practice).

92. See History.com Editors, *supra* note 82 (explaining how the federal government was not sure what to do with all the formerly enslaved people because the task of reintegrating them into a reformed South was more difficult than anticipated).

93. See generally ERIC FONER, *RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION* (1988) (discussing how the newly freed former slaves were better prepared to adapt to a post-Civil War society than what most contemporary historians acknowledged).

of the federal government's design for reparations.⁹⁴ This proposal was an idea which was first brought to General Sherman and President Lincoln's Secretary of State, William Seward, who then wanted Congress to enact it into law, but it ultimately fell short of implementation when it was scrapped by President Johnson, who thought that the bill as written was unconstitutional.⁹⁵ Thaddeus Stevens was a Representative from Pennsylvania, and a member of the "Radical Republicans" wing that pushed for harsher penalties to be imposed on the Southern states that seceded.⁹⁶ He realized that equality for every Black American, and not just the newly freed slaves, was more likely if economic power was shared and Black men were given the right to vote, fully supporting the idea that it was the role of the federal government to provide that economic assistance.⁹⁷

We have turned, or are about to turn, loose four million slaves without a hut to shelter them or a cent in their pockets. The infernal laws of slavery have prevented them from acquiring an education, understanding the commonest laws of contract, or of managing the ordinary business life. The congress is bound to provide for them until they can take care of themselves. If we do not furnish them with homesteads and hedge them around with protective laws; if we leave them to the legislation of their late master, we had better have left them in bondage.⁹⁸

94. See Henry Louis Gates Jr., *100 Amazing facts About the Negro: The Truth Behind '40 Acres and a Mule'*, PUB. BROAD.SERV., <https://www.pbs.org/wnet/african-americans-many-rivers-to-cross/history/the-truth-behind-40-acres-and-a-mule/> [<https://perma.cc/PJ49-7NAE>] (explaining the history of how and where this commonly known expression came to be known).

95. See Wormser, *supra* note 89 (providing context to what the Reconstructionists wanted the Freedmen's Bureau to accomplish by redistributing Southern lands owned by previous slaveholders. Often at odds with Congressional Republicans, President Johnson felt that the Civil War was fought to preserve the Union and opined that there was no such thing as reconstruction. Johnson's role as President was to ensure that the people's will was recognized, rather than implement coercive and stringent requirements for readmission to the Union. Johnson's plan to readmit the Southern States was seen as too lenient by his political enemies. As a result, amnesty was granted, calling for returning people's property if they pledged to be loyal to the United States).

96. See Thaddeus Stevens et al., *The Joint Committee on Reconstruction* (1865) (describing how Thaddeus Stevens introduced a resolution to create a Joint Committee on Reconstruction).

97. See Steve Moyer, *Remarkable Radical: Thaddeus Stevens*, NAT'L ENDOWMENT FOR THE HUMANITIES, <https://www.neh.gov/humanities/2012/novemberdecember/feature/remarkable-radical-thaddeus-stevens> [<https://perma.cc/X2GT-EXWM>] (illustrating the radical reform that Stevens advocated for amongst the African American community).

98. Levitt, *supra* note 91, at 8.

After passing the Thirteenth Amendment, Congress debated the economic rights of the freed slaves, and the “Radical” wing of the Republican party pushed for even more guaranteed rights to be provided.⁹⁹ Urged on by Stevens, Congress proposed to authorize the Bureau of Refugees, Freedmen, and Abandoned Lands.¹⁰⁰ It was given a mandate, (though no funding), to set up schools and to distribute “not more than forty acres of confiscated Confederate land to each family of freed slaves,” but it was never passed.¹⁰¹ Reconstruction ended in 1877 without the issue of reparations having been addressed any further.¹⁰² Support for the Radical wing waned within the Republican party, and the South began to reassert itself politically, enacting legislation to preserve and reinforce the social and economic inequalities that slavery had produced through new segregation and Jim Crow laws.¹⁰³ White organizations such as the United Daughters of the Confederacy and the Ku Klux Klan arose in the South with the purpose of reminding the newly freed slaves what their place was, and to reinforce, often violently, the social order.¹⁰⁴

99. See generally Rael, *supra* note 81 (displaying that despite the very limited gains made by the Freedmen’s Bureau, Congress was able to pass the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution, which were actions that the Freedmen’s Bureau would never have been able to do as chartered).

100. See generally Keri Leigh Merritt, *Race, Reconstruction, and Reparations*, BLACK PERSP., (Feb. 9, 2016), <https://www.aaihs.org/race-reconstruction/> [https://perma.cc/87WW-ULD9] (analyzing how Congress’ attempts at reconstruction often led to more disproportionate rates of race inequality).

101. See generally Horace Mann Bond, *Social and Economic Forces in Alabama Reconstruction*, 23(3) J. NEGRO HIST. 290, 304 (1938) (emphasizing how the Reconstruction era promoted the idea of a new beginning, but never delivered on it).

102. See generally Merritt, *supra* note 100 (concluding that Reconstruction ended without fulfilling one of its stated main purposes, economic reconciliation for the estimated four million newly freed African slaves.)

103. See Danyelle Solomon et al., *Systematic Inequality and American Democracy*, CTR. FOR AM. PROGRESS (Aug. 7, 2019, 7:00 AM), <https://www.americanprogress.org/issues/race/reports/2019/08/07/473003/systematic-inequality-american-democracy/> [https://perma.cc/PD7W-EPP8] (showing how in the decades that followed, Southern states adopted legislation that promoted the suppression of Black people).

104. See Grant, *Reconstruction and the KKK*, AM. EXPERIENCE, <https://www.pbs.org/wgbh/americanexperience/features/grant-kkk/> [https://perma.cc/Y24B-NK7N] (affirming that these organizations violently intimidated Black people and Republicans who tried to win political power).

90% of all Black people still lived in the former Confederate states as late as 1910.¹⁰⁵ This heavy congestion of Black people became known as the “Black Belt.”¹⁰⁶ South Carolina, Mississippi and Louisiana had majority Black populations, while Georgia, Florida and Alabama had Black populations in the high forties percentile.¹⁰⁷ These six states combined would have wielded a tremendous amount of political power because 80% of eligible Black men were registered to vote.¹⁰⁸ This potential political power was seen as a direct threat to White legislators who moved quickly to eradicate it.¹⁰⁹ Segregation and Jim Crow replaced slavery as the de facto law in the South following Reconstruction, despite the passage of the Thirteenth, Fourteenth and Fifteenth Amendments, and would remain so until the passage of the Civil Rights Act of 1964 and Voting Rights Act of 1965.¹¹⁰ Within half a century after the Civil War, the children of white Union and Confederate soldiers united against African American political and civil equality.¹¹¹ This showing of white supremacy enabled Southern whites to impose Jim Crow segregation laws on public spaces, disfranchise African American citizens by barring them from the polls, and used lynch-mob nooses to enforce Black compliance.¹¹² White Americans imposed increased white supremacy outside the South, too.¹¹³ According to Edward Baptist, “[i]n non-Confederate states, many restaurants wouldn’t serve black customers. Stores and factories refused to hire African Americans.”¹¹⁴ Hundreds of midwestern communities forcibly

105. See Joe Madison, *Finding Your Roots*, SIRIUSXM (Jan. 12, 2021), <https://www.siriusxm.com/clips/clip/0469a9b1-fd7d-4257-ab28-f76acc8fa2aa/3105b9d6-c9b7-4484-8297-21aa29f6c73f> [<https://perma.cc/P3FG-KG7Z>] (indicating the lack of mobility for Black people due to the harsh realities imposed by Jim Crow).

106. See *id.* (explaining that the “Black Belt” was a chain of neighborhoods on the South Side of Chicago and was an area of aging and dilapidated housing).

107. See *id.* (demonstrating the percentage of Black Americans in these states).

108. See generally *id.* (relating political power to eligibility of new Black voters).

109. See *id.* (emphasizing how the power granted to Black individuals was not appreciated and was often pushed down).

110. See Solomon et al., *supra* note 103 (noting that the Voting Rights Act provided the federal government enough authority to lessen the hold Jim Crow Laws had on the country).

111. Madison, *supra* note 105.

112. See *id.* (providing examples of the efforts that suppressed Black expression).

113. See Solomon et al., *supra* note 103 (realizing that Black oppression was not merely a tool in the South, but across the United States).

114. EDWARD E. BAPTIST, *Introduction to THE HALF HAS NEVER BEEN TOLD* xviii, xvi (2014).

evicted African American residents and became “sundown towns” (“Don’t let the sun set on you in this town”).¹¹⁵ Additionally, most white Americans truly believed that science proved there were biological distinctions amongst the various races, and that Europeans were the members of the “superior” race.¹¹⁶

The idea that the United States still owed not just an apology to its Black citizens for slavery, but financial compensation, was not lost on the Black leaders during the Civil Rights era.¹¹⁷ In particular, during the August 1963 March on Washington, Dr. Martin Luther King Jr. addressed this very issue in the beginning of his “I Have A Dream” speech, stating:

But one hundred years later, the Negro still is not free. One hundred years later, the life of the Negro is still sadly crippled by the manacles of segregation and the chains of discrimination. One hundred years later, the Negro lives on a lonely island of poverty in the midst of a vast ocean of material prosperity. One hundred years later, the Negro is still languished in the corners of American society and finds himself an exile in his own land. And so, we’ve come here today to dramatize a shameful condition. In a sense we’ve come to our nation’s capital to cash a check. When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir. This note was a promise that all men, yes, black men as well as White men, would be guaranteed the “unalienable Rights” of “Life, Liberty and the pursuit of Happiness.” It is obvious today that America has defaulted on this promissory note, insofar as her citizens of color are concerned. Instead of honoring this sacred obligation, America has given the Negro people a bad check, a check which has come back marked “insufficient funds.”¹¹⁸

The Civil Liberties Act of 1988 provided \$20,000 and an official apology from the United States Government to Americans of Japanese

115. *See generally id.* (discussing how towns increasingly grew dangerous for people of color in the United States).

116. *See generally id.* (finding that individuals believed that differences in color of skin went deeper than just color).

117. *Cf. Levitt, supra* note 91, at 33 (reporting that the idea of owed reparations were never far from the collective minds of Black leadership in the early to mid-20th century).

118. Dr. Martin Luther King Jr., Address at the March on Washington for Jobs and Freedom (Aug. 28, 1963).

ancestry who were interred during the Second World War,¹¹⁹ and acted as a catalyst, revitalizing Black leaders to once again build the efforts to press the federal government to recognize that there was a moral, ethical, and legal obligation owed to Black Americans.¹²⁰ Not just for slavery, but for all of the socioeconomic, political, and educational depravities suffered by African Americans as a result of the legacy of slavery, segregation and Jim Crow.¹²¹

Beginning in 1989 and every year until he retired from Congress in 2017, Representative John Conyers of Michigan introduced legislation in the House which aimed to create the Commission to Study Reparation Proposals for African Americans Act.¹²² The bill was introduced:

“[To] address the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the United States and the 13 American colonies between 1619 and 1865 and to establish a commission to study and consider a national apology and proposal for reparations for the institution of slavery, its subsequent de jure and de facto racial and economic discrimination against African-Americans, and the impact of these forces on living African-Americans, to make recommendations to the Congress on appropriate remedies, and for other purposes.”¹²³

For nearly thirty years, the bill went nowhere.¹²⁴ However recent events have increased racial tensions and have highlighted the need to address continued racial disparities.¹²⁵ Texas Democratic

119. See H.R. 442, 100th Cong. (1988) (demonstrating what the Civil Liberties Act of 1988 provided for the individuals affected).

120. See generally *id.* (harping on the obligation is owed to African Americans).

121. See Levitt, *supra* note 91, at 33 (noting that the federal government was willing to waive their sovereign immunity to right a wrong perpetrated on its own citizens).

122. See *Commission to Study Reparation Proposals for African Americans Act*, H.R. 3745, 101st Cong. (1989) (noting the enactment of the Commission to Study Reparation Proposals).

123. *Id.*

124. See generally *id.* (reading the Bill as follows: “[T]o acknowledge the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the United States and the 13 American colonies between 1619 and 1865 and to establish a commission to examine the institution of slavery, subsequent de jure and de facto racial and economic discrimination against African Americans, and the impact of these forces on living African Americans, to make recommendations to the Congress on appropriate remedies, and for other purposes.”).

125. See Breeanna Hare & Doug Criss, *Six Questions About Slavery Reparations, Answered*, CNN (Aug. 15, 2020), <https://www.cnn.com/2020/08/15/us/slavery-reparations-explanation-trnd/index.html> [<https://perma.cc/TX9L-9LKA>] (explaining that the widespread protests against police brutality and racial injustice following the death of George Floyd have

Representative, Sheila Jackson, picked up where Mr. Conyers left off and introduced the “Commission to Study and Develop Reparation Proposals for African-Americans Act,” in June of 2019.¹²⁶ Activist groups, like the National Coalition of Blacks for Reparations in America and the Restitution Study Group, sprang up during this period, and books, like Randall Robinson’s “The Debt: What America Owes to Blacks,” generated renewed excitement.¹²⁷

In 2002, Deadria Farmer-Paellmann became the lead plaintiff in a federal class-action suit against many companies including banks, the insurance company Aetna, and railroad firm CSX, and sought billions for reparations after Farmer-Paellmann connected the businesses to the slave trade.¹²⁸ Farmer-Paellmann got the idea for the lawsuit as she examined old Aetna insurance policies and documented the insurer’s role during the Nineteenth Century; a time when slaves were insured as chattel property and insurers sought financial payments for the value of “stolen” labor or other unjust enrichment.¹²⁹ The lawsuit stated that those “[c]orporations benefited from stealing people, from stealing labor, from forced breeding, from torture, from committing numerous horrendous acts, and there’s no reason why they should be able to hold onto assets they acquired through such horrendous acts.”¹³⁰ The case was dismissed for lack of standing by a federal judge in 2005 which held that the plaintiffs failed to prove a sufficient link to the corporations or prove how they were harmed.¹³¹ The judge also explained that the statute of limitations had long been

brought forth a new urgency to the debate whether descendants of American slaves should be compensated).

126. See *Commission to Study and Develop Reparation Proposals for African-Americans Act*, H.R. 40 116th Cong. (2019) (providing that H.R. 40 proposed to establish a commission that would study the effects of slavery and discriminatory policies on African-Americans and further recommend appropriate remedies which can include reparations).

127. See Hare & Criss, *supra* note 125 (explaining that the National Coalition of Blacks for Reparations in America or “N’COBRA” was founded in 1987 and has the sole purpose of obtaining reparations for African descendants in the United States).

128. See *id.* (noting that this lawsuit was filed on behalf of 35 million African-Americans).

129. See *id.* (clarifying that Aetna willingly provided their old policy documents to Farmer-Paellmann upon her asking).

130. *Id.*

131. See *id.* (addressing that the lawsuit did not seek a specific dollar amount, but rather estimated the amount that slaves performed of unpaid labor).

passed.¹³² After several appeals proved unsuccessful, the push for reparations faded.¹³³

However, a powerfully compelling article written in *The Atlantic* by Ta-Nehisi Coates reignited interest again in the issue of reparations.¹³⁴ New reparations advocacy groups, like the United States Citizens Recovery Initiative Alliance Inc., also began to take up the legal fight for reparations.¹³⁵ Black Lives Matter includes slavery reparations in its list of proposals to improve the economic lives of Black Americans.¹³⁶ Even a United Nations panel said the United States should study reparations proposals.¹³⁷ Injustices captured and shared via social media and the changing racial demographics in the United States has made the topic of reparations timely.¹³⁸ During the 2020 Presidential Primaries, the majority of the twenty-seven Democratic candidates who ran for president had an official policy statement or issue statement addressing reparations for slavery, with only one candidate stating the position to not pay some type of reparations or study the issue further.¹³⁹ The message is clear: something must be done, and done now.

132. *See id.* (emphasizing that the statute of limitations for this class-action lawsuit was five years, and the plaintiffs argued a continuing tort that they believed tolled the statute).

133. *See id.* (elaborating how the unsuccess of this class action lawsuit caused people to start feeling hopeless towards pushing for reparations).

134. *See Coates, supra* note 32 (Ta-Nehisi Coates said, “Two hundred fifty years of slavery. Ninety years of Jim Crow. Sixty years of separate but equal. Thirty-five years of racist housing policy. Until we reckon with our compounding moral debts, America will never be whole”); *see also Hare & Criss, supra* note 125 (illustrating how Ta-Nehisi’s article was comprised of dozens of the most important pieces from the archives on race and racism of America).

135. *See Hare & Criss, supra* note 125 (claiming that these organizations pushed the publications of books that advocated for the idea of reparations).

136. *See id.* (analyzing how even though these advocacy groups support these reparation proposals, a 2016 poll found that nearly 70% of American’s still believe that the United States shouldn’t pay reparations to the descendants of slaves).

137. *See id.* (emphasizing that even with advocacy groups, the United Nations, and democratic presidential candidates’ support, slavery reparations still face an uphill battle in our Nation).

138. *See generally Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System*, SENT’G PROJECT (Apr. 19, 2018), <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/> [<https://perma.cc/XZQ5-QDCA>] (demonstrating that the issue of reparations continues to be relevant today).

139. *See Maya King, Reparations*, POLITICO, <https://www.politico.com/2020-election/candidates-views-on-the-issues/economy/reparations/> [<https://perma.cc/4FS5-WMWM>] (last updated Aug. 8, 2019) (reporting on their position on paying reparations for slavery for every Democratic Party candidate for President. Every candidate has supported further studying how reparations could be paid out, want to make immediate reparations payment, or has not stated a

B. There Is No Better Justification For Reparations Established Than Federal Payments Made To Slave Owners Before And After The Civil War

The belief that paying for slavery reparations never happened in the United States is a false narrative.¹⁴⁰ In fact, reparation payments made by the federal government, state governments, cities, and religious and academic institutions go as far back as the 18th century.¹⁴¹ For example, Belinda Sutton, who was born in what is now Ghana, was sold into slavery to Isaac Royall in Massachusetts and was his slave for fifty years.¹⁴² A Royalist, Royall fled to Nova Scotia during the Revolution.¹⁴³ Afterwards, he set Sutton free, and she petitioned the Commonwealth of Massachusetts for a pension, which she was awarded in 1783: fifteen pounds, twelve shillings to be paid from the estate of Isaac Royall.¹⁴⁴ “A heavy account lies against us as a civil society for oppressions committed against people who did not injure us,” wrote the Quaker John Woolman in 1769, “and that if the particular case of many individuals were fairly stated, it would appear that there was considerable due to them.”¹⁴⁵ By the time the American colonies were gaining independence, Black reparations were actively considered and often

position, with the lone dissenting voice coming from Montana’s Governor Steve Bollock, who states that cash payments were not the way to address the issue); *accord* Marianne Williamson, *Race and Repentance in America*, MARIANNE, <https://marianne.com/race-and-repentance-in-america/> [<https://perma.cc/3899-CUUD>] (speaking as a Democratic party candidate for president, articulating the urgent need at the national level for there to dialog addressing race relations in the United States).

140. *See generally* Allen J. Davis, *An Historical Timeline of Reparations Payments Made from 1783 Through 2020 by the United States Government, States, Cities, Religious Institutions, Colleges and Universities, and Corporations*, UMASS AMHERST LIBR., <https://guides.library.umass.edu/reparations> [<https://perma.cc/4UK9-D9PX>] (“Reparations are a program of acknowledgement, redress, and closure for a grievous injustice”).

141. *Cf. id.* (illustrating that there is sufficient historical evidence that is well documented showing American governments have paid reparations for damages received on account of their policies and actions).

142. *See id.* (illustrating the very first instance where a white jury agreed that there needed to be some type of compensation for a former slave for the years of free labor provided).

143. *See id.* (explaining that Royall fleeing during the Revolution is what allowed Sutton to be free).

144. *See id.* (providing that Sutton was awarded fifteen pounds and twelve shillings from the estate of Isaac Royall. At this time, cash compensation provided from the estate of her former slave owner was determined to be a fair means of compensation).

145. Coates, *supra* note 32.

effected.¹⁴⁶ Quakers in the Northeast made membership contingent on slave compensation.¹⁴⁷ Robert Pleasants, a Quaker, emancipated his slaves, granted them land, and built a school on their property while providing for their education.¹⁴⁸ Pleasants believed that doing this for his slaves would correct an injustice and would be “an acceptable offering to him who ‘[r]ules in the kingdom of men.’”¹⁴⁹

Reparations were not only private affairs.¹⁵⁰ In 1862, the District of Columbia passed their Emancipation Act into law.¹⁵¹ The Act made it possible for slaves to be free while providing monetary compensation to their owners.¹⁵² Following the enactment of the Act, commissioners approved hundreds of petitions which granted freedom to nearly 3,000 slaves.¹⁵³

On January 12, 1865, General Sherman and Edwin Stanton, Lincoln’s Secretary of War, met with twenty Black leaders in Savannah, Georgia and asked them what they wanted for their people following the war.¹⁵⁴ Garrison Frazier, a Baptist minister, was the spokesperson of choice and represented to Sherman and Stanton that Black people believed the best way their people could take care of themselves was to “have land, and

146. *See id.* (showing that property was granted as a way to pay reparations).

147. *See id.* (referencing the requirement of paying for labor as a membership to the Quaker group).

148. *See id.* (reporting the efforts of the New York Quakers in making Black reparations happen. Robert Pleasants was one of those Quakers that believed in Black reparations as he liberated his seventy-eight slaves, granted them 350 acres of land, and helped them get the education they needed. Pleasants believed this to be the right action to take to correct an injustice).

149. *See id.* (demonstrating the reasoning of one Quaker who freed his slaves and provided different opportunities for them).

150. *Compare id.* (providing an example of a successful public plea made to the Massachusetts legislature centuries ago for reparations) with *The Civil War: The Senate’s Story*, U.S. SENATE, https://www.senate.gov/artandhistory/history/common/civil_war/DCEmancipationAct_FeaturedDoc.htm [<https://perma.cc/2R6X-P8Y4>] (establishing the history of the Emancipation Act).

151. *See, e.g., The Civil War: The Senate’s Story*, *supra* note 150 (discussing the efforts of the District of Columbia in freeing slaves).

152. *See id.* (outlining the major provisions of the Act, including a \$300 compensation provided to prior slave owners for each free person).

153. *See id.* (pointing out that many other commissioners joined in freeing slaves. More than 930 petitions were approved, and 2,989 slaves were freed).

154. *See* Gates, *supra* note 84 (clarifying the misconception that the idea was originated by either General Sherman or Lincoln’s Secretary of State Seward. The idea actually came from an assembled group of Black leaders, many of whom were former slaves themselves, who they asked what they wanted more than anything else now that they were free men).

turn it and till it by our own labor”¹⁵⁵ Sherman, after President Lincoln’s approval, granted the request.¹⁵⁶ Sherman’s order elicited an “electric” response; one that forced some to adjust their perception of “colored people.”¹⁵⁷ These islands became known as Sherman Land, named so in gratitude to General Sherman.¹⁵⁸ A year later, the Southern Homestead Act of 1866 was enacted to alleviate the cycle of debt during Reconstruction; however, newly freed Blacks were largely unable to purchase the land set aside at lower prices.¹⁵⁹ Under the Southern Homestead Act, “[e]x-slaves were given six months to purchase land at reasonable rates without competition from white southerners and northern investors.”¹⁶⁰ However, freedmen were crippled by extreme poverty and unable to participate in the program.¹⁶¹ Historian Keri Leigh Merritt explains what this new reality meant for newly freed African slaves: “With the advent of emancipation . . . blacks became the only race in America ever to start out—as an entire people— with close to zero wealth.”¹⁶² To complicate matters further, such a lack of resources made it “nearly impossible” to secure a loan.¹⁶³ This destitution belittled the

155. Gates, *supra* note 84 (showing how both Seward and Sherman viewed the idea of land redistribution as just compensation for the newly freed slaves, especially since the land that was to be given to them belonged to their former slave owners. The federal reparations experiment was short-lived, however. After Abraham Lincoln was assassinated in April 1865, his successor, Andrew Johnson, canceled the program and returned the land to the planters who had originally owned it).

156. *See id.* (explaining how a January 1865 meeting where a request for land was made accommodated 40,000 freedmen’s settlement on 400,000 acres of ‘Sherman Land’ by June of 1865).

157. *See id.* (characterizing the response to Sherman’s order)(“From this it will be seen that the colored people down South are not so dumb as many suppose them to be”).

158. *See, e.g.,* Wills, *supra* note 6 (recounting the brief period of Sherman Land’s existence).

159. *See* Paul Wallace Gates, *Federal Land Policy in the South 1866-1888*, 6 J. S. HIST. 303, 308–09 (1940) (“The Southern Homestead Act of 1866 was such an obviously discriminatory measure”—providing land at a low cost to individuals with little to no means, on the condition that they farm land that was “not suitable for farming . . .”).

160. Davis, *supra* note 140 (presenting a detailed timeline for reparation payments made by the United States and comparing it to reparations paid by other countries such as Germany and Canada).

161. *See, e.g., id.* (estimating that “little more than 3,000” ex-slaves had the means to take advantage of the Southern Homestead Act, resulting in the programs failure).

162. *See* Merritt, *supra* note 100 (noting the continued obstacles Black Americans faced even after acquiring their freedom).

163. *See id.* (“Having nothing else upon which to build or generate wealth, the majority of freedmen had little real chance of breaking the cycles of poverty created by slavery, and perpetuated by federal policy.”).

potential impact of federal efforts like the Southern Homestead Act—which required freedman have resources to take advantage of the provided land.¹⁶⁴

Courts also awarded reparations, in the form of restitution; Henrietta Wood was a free Black woman who worked as a domestic worker in Cincinnati when she was lured across the Ohio River and sold to slave traders by a man names Zebulon Ward.¹⁶⁵ The slave traders took her to Texas where she remained until the end of the Civil War.¹⁶⁶ She was able to return to Cincinnati and she sued Ward for \$20,000 for lost wages and damages in 1870.¹⁶⁷ Eight years later, an all-White jury decided in her favor and ordered Ward to pay \$2,500—possibly the largest sum ever awarded by a United States Court as restitution for slavery.¹⁶⁸

There are more recent examples of reparations as well.¹⁶⁹ One of these recent reparation efforts arose from perhaps one of the most gruesome incidents of violence committed against members of the Black community.¹⁷⁰ In the January 1923 Rosewood massacre, the small town in central Florida was burned to the ground and completely destroyed, while many of its Black residents were murdered by white mobs seeking retribution for what they thought was a sexual assault on a young white

164. See Davis, *supra* note 140 (invalidating the Southern Homestead Act of 1866).

165. See W. Caleb McDaniel, *The Former Slave Who Sued for Reparations, and Won*, N.Y. TIMES, (Sept. 4, 2019) <https://www.nytimes.com/2019/09/04/opinion/henrietta-wood-reparations-slavery.html> [<https://perma.cc/87S8-7GZ3>] (illustrating the lengths that slave trackers would go to secure their bounties, even abduction of free Blacks. These practices were portrayed in the movie *12 Years a Slave*, based on the 1853 book of the same name which tells the true story of Solomon Northup, a free Black man born in New York and tricked to go to Washington DC, where he was abducted himself and sold into slavery in the Deep South).

166. See *id.* (proving that Henrietta was abducted and used as a slave against her will).

167. See *id.* (addressing how Henrietta Wood began her judicial process of suing for reparations).

168. See *id.* (emphasizing the historical nature of the verdict awarding damages and lost wages to a freedman, especially in such a sizeable amount).

169. See generally William Booth, *Rosewood*, WASH. POST (May 30, 1993), https://www.washingtonpost.com/archive/lifestyle/1993/05/30/rosewood/7b3a45c0-0c20-42e8-9b41-ebf5b7552518/?utm_term=.3191095083a5 [<https://perma.cc/WGS8-PKAD>] (writing about efforts made as recent as the 1990s to remedy Black suffering that occurred approximately seventy years earlier).

170. See *id.* (describing the killing, torturing, the hanging out of victims as a symbol, and setting fire to the Black community of Rosewood, Florida).

woman.¹⁷¹ Some of the town's youngest citizens were able to escape.¹⁷² The story of what happened in Rosewood was forgotten until the early 1980s when Gary Moore, who worked as a journalist for the *St. Petersburg Times*, resurrected the history of Rosewood through a series of articles that gained national attention.¹⁷³ Led by Rosewood descendant Arnett Doctor, the living survivors of the massacre came forward, at that point all in their eighties and nineties, and demanded restitution from Florida.¹⁷⁴ "We deliberately avoided anything but compensation for the losses they incurred," said Martha Barnett, an attorney at Holland & Knight who helped lobby the Florida legislature on behalf of the survivors of Rosewood.¹⁷⁵ In addition to reparations, the Rosewood survivors wanted the state of Florida to finally acknowledge the "atrociousness" that was the massacre and to admit their failure to protect its Black residents.¹⁷⁶ Barnett said, "the term 'reparations' can't be found in the law passed in Florida."¹⁷⁷ Rather, attorneys concentrated on private property rights.¹⁷⁸ Barnett said she and other attorneys needed "to make it something legislators could find palatable in the deep south

171. *See id.* (illustrating a commonly and frequently used contrivance for the justification of mobs extrajudicial killings of Blacks by whites in the South during Jim Crow. Rosewood, like many of the other acts of violence and murder committed by white mobs, was based on false premises, if not outright lies).

172. *See id.* (raising the concern that the exact events of Rosewood remain hazy, as "[m]any of the survivors were children during the incident and are now in their seventies and eighties.").

173. *See* History.com Editors, *Rosewood Massacre*, HIST. (May 4, 2018), <https://www.history.com/topics/early-20th-century-us/rosewood-massacre> [<https://perma.cc/D72Z-ZYTS>] (recognizing that something terrible happened in Rosewood, Florida in 1923, but there was very little documentation. The children who survived the attacks were told by elder family members to never speak to anyone about what they had lived through, which allowed the secret of the massacre to be kept for nearly sixty years).

174. *See* Jessica Glenza, *Rosewood Massacre a Harrowing Tale of Racism and the Road Toward Reparations*, GUARDIAN (Jan. 3, 2016, 8:00 AM), <https://www.theguardian.com/us-news/2016/jan/03/rosewood-florida-massacre-racial-violence-reparations> [<https://perma.cc/WL5G-RRJH>] (providing context to how the Rosewood story unfolded, as the survivors came forward to not only tell their story, but to demand that reparations were owed to them because the state of Florida failed in its duty to protect its most vulnerable citizens).

175. *See id.* (identifying the mere ask made by the Rosewood massacre survivors and their representing attorneys in response to their unremedied loss and suffering).

176. *See* Booth, *supra* note 169 (calling out the survivors' grievances with the state of Florida and their goals in seeking reparations).

177. Glenza, *supra* note 174.

178. *See id.* (showing how attorneys in Florida attempted to provide a remedy for Rosewood survivors).

some 20-some years ago.”¹⁷⁹ The action led to the passing of a bill for property and hedonic damages, and the creation of “The Rosewood Family Scholarship Fund.”¹⁸⁰ The first amendment to the bill provided for compensation of up to \$150,000 for each Rosewood survivor.¹⁸¹ The Florida bill, by providing a form of reparation for Rosewood survivors, created a unique state program that joined the ranks of various federal programs that have provided payments to Holocaust survivors, interned Japanese Americans, and similarly situated victims deserving of redress.¹⁸²

C. Previous Reparations Paid by the United States

The Indian Claims Commission serves as another example of federal reparations.¹⁸³ This effort was complicated by various logistical issues faced in placing value on and drawing boundaries around land owned “more than a century earlier.”¹⁸⁴ The result of that effort was disappointing, as “less than \$1,000 for each Native American in the United States” was provided for under the Commission by its dissolution

179. *See id.* (demonstrating how, decades later, massacre victims are still adjusting their grievances to accommodate the state of Florida).

180. *Cf.* C. Jeanne Bassett, *House Bill 591: Florida Compensates Rosewood Victims and Their Families for a Seventy-One-Year-Old Injury*, 22 FLA. STATE U. L. REV. 503, 503, 518 (1994) (listing the specific damages compensated under House Bill 591, which was signed into law by the governor of Florida on May 4, 1994).

181. *See id.* at 517–18 (describing the first amendment made to the bill in the Florida Legislature’s appropriations committee, which ultimately became a part of the passed law).

182. *Compare id.* at 517 (outlining the form of reparations provided to Rosewood survivors under the passed Florida House Bill 591), with Shelley Buchanan, *Questioning the Political Question Doctrine: Inconsistent Applications in Reparation and Alien Tort Claims Act Litigation*, 17 CARDOZO J. INT’L & COMPAR. L. 345, 366 (2009) (describing the ultimately fruitful attempts by Japanese-Americans in seeking federal “reparations for internment during World War II” and how that path to receiving reparations differed from those seeking reparations in response to the Holocaust).

183. *See* Adeel Hassan & Jack Healy, *America Has Tried Reparations Before. Here is How it Went*, N.Y. TIMES (June 19, 2019), <https://www.nytimes.com/2019/06/19/us/reparations-slavery.html?action=click&module=RelatedCoverage&pgtype=Article®ion=Footer> [<https://perma.cc/GW36-A4CM>] (“After World War II, Congress created the Indian Claims Commission to pay compensation to any federally recognized tribe for land that had been seized by the United States.”).

184. *See id.* (“The group’s mission was complicated by a paucity of written records, difficulties in putting a value on the land for its agricultural productivity or religious significance, and problems with determining boundaries and ownership from decades, or more than a century, earlier.”).

in 1978.¹⁸⁵ A lawyer for the Native American Rights Fund noted the restrictions on Native Americans' ability to freely use the funds as a paternalistic and hands-on approach from the federal government.¹⁸⁶

In a separate agreement with Congress in 1971, Indians, Eskimos, and Aleuts exchanged their claims to all of Alaska for 44 million acres of land.¹⁸⁷ However, that sizeable award was not exceptional in the manner it was awarded and distributed: instead of being awarded directly to the individuals whom it sought to provide reparations, the land was put into the control of corporations, whereas the rightful beneficiaries were provided stock in that land.¹⁸⁸ By the end of 1994, together, between the Indian Claims Commission's award of over \$818 million over thirty-one years, and the Court of Claims award of an additional \$400 to \$500 million in resolving undecided Indian Claims Commission Act cases, approximately \$1.3 billion was awarded.¹⁸⁹

Just two months after the Japanese attack on Pearl Harbor, President Franklin D. Roosevelt issued an executive order that authorized the rounding up of people of Japanese descent and their placement in internment camps—fearful that they were spying for Japan.¹⁹⁰ Despite the lack of any credible evidence, the War Relocation Authority incarcerated more than 100,000 people—two-thirds of whom were American citizens—holding them garrisoned in crowded camps surrounded by barbed wire fences.¹⁹¹ Individuals held captive in the

185. *See id.* (breaking down the total paid out—\$1.3 billion—to quantify the hypothetical reparations provided to each member of this population).

186. *See, e.g., id.* (explaining the reasoning behind that position: “They did not make those awards, whether it was \$200 million, \$20 million or \$20,000—they held that money in trust accounts.”).

187. *See id.* (summarizing a 1971 agreement struck with Congress).

188. *See id.* (demonstrating the unwritten but repeated policy of the United States Congress: providing reparation at arms-length).

189. *See* MICHAEL LIEDER & JAKE PAGE, *WILD JUSTICE: THE PEOPLE OF GERONIMO VS. THE UNITED STATES* 1, 257 (Random House, 1st ed. 1997) (comparing the ultimate “\$1,000 a piece” Native Americans received with the \$20,000 a piece Japanese Americans “became eligible to receive” as reparations for interment during World War II).

190. *See* Isabella Rosario, *The Unlikely Story Behind Japanese Americans' Campaign for Reparations*, NAT'L. PUB. RADIO (Mar. 24, 2020, 6:40 AM), <https://www.npr.org/sections/codeswitch/2020/03/24/820181127/the-unlikely-story-behind-japanese-americans-campaign-for-reparations> [<https://perma.cc/NJM3-XKNF>] (recounting the consequences of a “baseless suspicion” on an entire group of people).

191. *See id.* (demonstrating the indifference the United States government had towards Japanese people residing in the country. Despite some of them being Americans, the government did not care. If they had Japanese blood, they were put in concentration camps and mistreated).

internment camp founded the Japanese American Citizens' League: a civil rights movement to seek redress, which was met with resistance by both the American public and within Japanese American generations.¹⁹² Although it faced resistance, the effort to seek redress for Japanese Americans proved fruitful.¹⁹³ The sentiment that dissolved the internal resistance amongst Japanese Americans and allowed their movement for reparations to be successful was that the effort was not about them—but it was “an issue [] about the Constitution and the future [of this country].”¹⁹⁴

D. International Reparations Show It Can Be Done, America Has No Excuse

As a part of the peace treaty Japan signed in conclusion of its involvement in World War II, Japan was ordered to pay reparations to the Allied powers.¹⁹⁵ Article 14 of the 1951 Treaty of Peace with Japan states in part: “[I]t is recognized that Japan should pay reparations to the Allied Powers for the damage and suffering caused by it during the war.”¹⁹⁶

Germany was ordered to pay reparations twice in the 20th century, as the loser of both World Wars.¹⁹⁷ On April 24th, 1921, the German

192. *Cf. id.* (“The conflict most often occurred between generations: the Nisei generation, who were born between 1910 and 1930 to immigrant parents, and the Sansei, who were either incarcerated at a very young age or born after the war. To process the trauma of the camps, Tateishi writes, the Nisei generation embraced traditional values that encouraged them to put the past behind them; for example, *gaman* means ‘to endure or persevere with dignity,’ and *shikataganai* translates to ‘it can’t be undone’ or ‘it can’t be helped.’ Their careers and businesses were mostly upended by internment, Tateishi says, but they were not interested in focusing the JAACL’s efforts on the ‘government handout’ of reparations. [The] children [of] the Sansei generation [grew up in the shadow of the Civil Rights Movement.]”).

193. *See id.* (“[F]inally, in 1988—a decade after the campaign began and over 40 years after the internment camps closed—President Ronald Reagan signed the Civil Liberties Act, which offered a formal apology and paid \$20,000 to each survivor.”).

194. *See id.* (quoting a founder of the Japanese American Citizens’ League: “We were determined to pass [the Civil Liberties Act] as a way of having Americans recognize the injustice of what happened to us—not for our sake, but in order to make sure this never happened again.”).

195. *See* Treaty of Peace with Japan (with two declarations), art. 14, Sep. 8, 1951, 136 U.N.T.S. 1832 (illustrating that there is a historical precedent for various governments paying reparations to both other governments and citizens).

196. *See, e.g., id.* (allowing the Allied Powers to “[h]ave the right to seize, retain, liquidate or otherwise dispose of all property, rights and interests of Japan and Japanese nationals, persons acting for or on behalf of Japan or Japanese nationals, and entities owned or controlled by Japan or Japanese nationals . . . “in order to satisfy that debt).

197. *See* Erin Blakemore, *Germany’s World War I Debt was so Crushing it took 92 Years to Pay Off*, HIST. (June 27, 2019), <https://www.history.com/news/germany-world-war-i-debt->

Government wrote to the American Government expressing “her readiness to acknowledge for reparation purposes a total liability of fifty billion gold marks,” but was also prepared “to pay the equivalent of this sum in annuities adapted to her economic capacity totaling 200 billion gold marks.”¹⁹⁸ Germany also indicated its intent to provide resources to remedy the hate spread by the war along with rebuilding towns and villages destroyed.¹⁹⁹ When what was then known as West Germany began the process of making amends for the Holocaust in 1952, it did so under conditions not unlike those that are found here; they owed and paid reparations to the survivors of the Holocaust who were now Israeli citizens, a model of success that the United States could learn from.²⁰⁰ It may be difficult to imagine that resistance to paying reparations would turn violent in America as it did in West Germany.²⁰¹ Coates notes that few Germans felt the Jewish community was owed anything.²⁰² Furthermore, the majority of West Germans showed no remorse for any atrocities committed by Germany during WWII, with only 5% feeling some responsibility for Germany’s actions.²⁰³ Outside of those 5% who felt guilty, other respondents felt that the bystanders

treaty-versailles [https://perma.cc/5S5Z-DVTW] (reporting that the Treaty of Versailles awarded the Allied nations of World War I 132 billion gold marks, about \$269 billion in US dollars in 2019. This debt was crushing for the Weimar Republic, and a new plan was implemented in 1928 reducing the amount Germany owed to 121 billion gold marks. Adolph Hitler canceled the debt altogether when he became German Chancellor in 1933, however the Allies exacted reparations for World War II, too. “They weren’t paid in actual money, but through industrial dismantling, the removal of intellectual property and forced labor for millions of German POWs . . . Germany slowly chipped away at the last bit of debt. It made its last debt payment on October 3, 2010—the 20th anniversary of German reunification.”).

198. *The Commissioner at Berlin (Dresel) to the Secretary of State*, OFF. OF THE HISTORIAN (Apr. 25, 1921), <https://history.state.gov/historicaldocuments/frus1921v02/d50> [https://perma.cc/CP6L-YUX2] (demonstrating Germany’s willingness to state an actual monetary sum for reparations, which the United States has been reluctant to do).

199. *See* Coates, *supra* note 32 (“In 1952, when West Germany began the process of making amends for the Holocaust, it did so under the conditions that should be instructive to us.”).

200. *See The Commissioner at Berlin (Dresel) to the Secretary of State*, *supra* note 198 (illustrating that even a conquered enemy of the United States realizes and understands both its legal and ethical obligations to make amends and reparations).

201. *See* Coates, *supra* note 32 (highlighting the ways in which resistance to reparations for the Holocaust turned violent due to Germans lingering attitudes toward Jews).

202. *See id.* (demonstrating resistance to reparations has the potential to turn violent when the events demanding amends were recent and the public may still have strong prejudices against the oppressed group).

203. *See id.* (demonstrating the overwhelming resolve West Germans had for Germany’s conquest of Europe and extermination of Jewish people).

should not be held liable and that those in the Jewish community should also shoulder some of the blame.²⁰⁴ The issue was resolved by West Germany agreeing to pay Israel the equivalent of \$7 billion dollars.²⁰⁵ Coates notes that Israeli citizens also filed claims for financial reparations for a variety of reasons, including “psychological trauma, offense to Jewish honor, for halting law careers, for life insurance, and for time spent in concentration camps.”²⁰⁶ Some of these reparations were directed to purchase merchant ships for Israel, making up two thirds of that country’s merchant fleet by the end of 1961.²⁰⁷ Tom Segev, an Israeli historian, illustrates that the money from German reparations had a significant impact on Israeli infrastructure.²⁰⁸ In this time period, Israel’s GNP tripled, 45,000 jobs were created, and the Bank of Israel alone responsible for 15% of the growth via investments from West Germany’s financial reparations.²⁰⁹ Segev further indicates that money on its own could not atone for the atrocities committed by the Nazis, but it did elicit reflection on Germany’s behalf, making the nation face its bloodstained past.²¹⁰ Coates highlights Segev’s conclusion with this profound insight: “[B]ut [reparations] did launch Germany’s reckoning with itself, and perhaps provided a road map for how a great civilization might make itself worthy of the name.”²¹¹

204. *See id.* (“‘The rest,’ the historian Tony Judt wrote in his 2005 book, *Postwar*, ‘were divided between those (some two-fifths of respondents) who thought that only people ‘who really committed something’ were responsible and should pay, and those (21 percent) who thought ‘that the Jews themselves were partly responsible for what happened to them during the Third Reich.’”).

205. *See id.* (arguing that there was a strong belief among many Israelis vehemently opposed to accepting reparations from West Germany, as it would appear that the Germans were able to buy their forgiveness and be atoned for the Holocaust, chief among them future Prime Minister Menachem Begin).

206. *Id.* (emphasizing that reparations can be dispersed to groups as a whole and to individuals particularly affected).

207. *See id.* (“‘By the end of 1961, these reparations vessels constituted two-thirds of the Israeli merchant fleet.’”).

208. *See id.* (demonstrating the benefits reparations programs can have on a country’s economy).

209. *See id.* (emphasizing the tremendous impact that Germany’s reparations had on healing a nation of people who suffered at the hands of the Germans).

210. *See id.* (explaining the political issue raised with German reparations, and how no amount of money paid could make up for the murder perpetrated by the Nazis. But what the reparations did provide Germany the ability for was introspection, and allowed it begin reckoning with itself, as a road map back to restoring and rehabilitating Germany’s reputation and generally positive world image among the nations).

211. *Id.*

II. ANALYSIS

*Do you know that a lot of the race problem grows out of the . . . need that some people have to feel superior. A need that some people have to feel . . . that their white skin ordained them to be first.*²¹²

A. *There Exists A Compelling Legal Obligation*

What legal obligation does the United States have in terms of paying reparations to Black Americans who are the descendants of slavery?²¹³ The Fourteenth Amendment was written in large part to protect the rights of the newly freed Black slaves.²¹⁴ In particular, the Equal Protection Clause was written into the amendment to counter “Black Codes” which were laws written by the Southern states to restrict Black Americans’ freedoms.²¹⁵ In *Mohamed v. Tattum*, the federal district court in Kansas stated that “[T]he Fourteenth Amendment does not apply to the United States or to its officers, and, thus, a person may be liable under the Fourteenth Amendment only if he is a state actor.”²¹⁶ Furthermore, to be regarded as a state actor, who could be liable under the Fourteenth Amendment, a person must: (1) be a state official; (2) have acted together with or obtained substantial aid from the state; or (3) engage in conduct that is chargeable to the state.²¹⁷ If the United States officially outlawed slavery with the adoption

212. Dr. Martin Luther King Jr., *Drum Major Instinct* (Feb. 4, 1968) (available at <http://bethlehemfarm.net/wp-content/uploads/2013/02/DrumMajorInstinct.pdf>) [<https://perma.cc/RT4R-MXJY>].

213. See Coates, *supra* note 32 (emphasizing the political question regarding who should pay for the reparations of slavery that occurred in the United States).

214. See generally U.S. CONST. amend. XIV § 1 (directing the reader to the historical origins of the Fourteenth Amendment’s creation to combat slavery).

215. See History.com Editors, *Black Codes*, HIST. (June 1, 2010) <https://www.history.com/topics/black-history/black-codes#:~:text=Impact%20of%20the%20Black%20Codes,The%20restrictive%20nature&text=The%20Reconstruction%20Act%20of%201867,they%20could%20rejoin%20the%20Union.> [<https://perma.cc/6R3A-WH5L>] (“The Reconstruction Act of 1867 required southern states to ratify the 14th Amendment—which granted ‘equal protection’ of the Constitution to former enslaved people.”).

216. *Mohamed v. Tattum*, 380 F.Supp.2d 1214, 1224 (D. Kan. 2005).

217. See *id.* at 1215 (exemplifying a state case where the freedoms of Black Americans were blatantly ignored, even after ratification of the Fourteenth Amendment).

of the Thirteenth Amendment in 1865,²¹⁸ and the “state actors” to which the Equal Protection Clause of the Fourteenth Amendment which would apply specifically to reparations owed for slavery no longer alive, (and arguably, as part of the Confederate States of America, and therefore not citizens of the United States), the question of determining who is responsible for payment of slavery reparations becomes extremely complicated.²¹⁹

One of the main legal arguments against the federal government is reflected in the doctrine of sovereign immunity, stating that the United States cannot be sued unless it consents to or waives its right of sovereign immunity.²²⁰ The argument often used by those who would oppose paying reparations for slavery is the reminder that it was the United States government and its military, under the leadership of the Republican President Lincoln, who fought against the Confederacy to free the slaves.²²¹ How can you sue the entity for reparations for something that it was officially opposed to?²²² Several other related questions as to who should be on the hook for paying for slavery reparations are:

Should white descendants of those who fought for the North pay for reparations?²²³

218. See U.S. CONST. amend. XIII, § 1 (“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”).

219. *But cf.* David Frum, *The Impossibility of Reparations*, ATL. (June 3, 2014), <https://www.theatlantic.com/business/archive/2014/06/the-impossibility-of-reparations/372041/> [<https://perma.cc/R92W-KEMH>] (highlighting that there are those who have considered the impossibility of reparations and the further racial implications that would impact reparations. This is contrary to the opinion of Ta-Nehisi and their case for restitution to Black Americana).

220. See Levitt, *supra* note 91, at 26 (explaining how sovereign immunity and *Jus Cogens* are norms of international law that cannot be put aside, thereby strengthening the argument that a lawsuit naming the United States as a party is legally unsupported).

221. *But cf.* Frum, *supra* note 219 (referencing back to the opposing point of view that there are those who do not see how reparations are feasible, while emphasizing that those in government power were opposed to slavery and fighting to end slavery).

222. *But cf. id.* (restating the difficulties in suing the U.S. government for slavery reparations when the government was the one who officially fought the Confederates in order to provide freedom to slaves).

223. See *e.g.*, Samara Lynn & Catherine Thorbecke, *What America Owes: How Reparations Would Look and Who Would Pay*, ABC NEWS (Sept. 27, 2020, 9:00 AM), <https://abcnews.com/Business/america-owes-reparations-pay/story?id=72863094>

Should Latinos, whose ancestors did not own slaves, or participate in the slave trade, pay for slavery reparations?²²⁴

The same questions arise for Asian Americans or those Americans whose ancestors arrived via immigration during the latter part of the nineteenth century and early twentieth century.²²⁵ Clearly, their ancestors had no involvement with the slave trade, and the idea that they should shoulder paying for slavery reparations seems as inappropriate as it is unfair.²²⁶

B. The Case For Paying Reparations Does Not Result In Unjust Enrichment For Black Americans

Truthfully, wide disparities exist between Black Americans and white Americans in every measurable socio-economic metric: our systems of accumulating wealth, labor, housing, education, voting, healthcare, and justice.²²⁷ Many of the disparities between Black and white communities in the United States are an outgrowth of a long history of discriminatory and dehumanizing laws and policies that have created and exacerbated these inequalities.²²⁸ As stated earlier, “[t]hese laws and policies are built into the fundamental structures of our

[<https://perma.cc/2RTE-QX74>] (arguing that individuals with ancestral ties to slave ownership are too far removed to be held liable for reparations, and that the government should be responsible for their payment); *but cf.* Frum, *supra* note 219 (rhetorically asking the question whether the descendants of white slave owners should be found responsible for reparations, and suggesting that the U.S. government could trace the genealogy of every white family who was a slaveholder or slumlord. However, going that route may not bring change).

224. *See generally* Frum, *supra* note 219 (addressing the challenges presented by identifying who would qualify for reparations and who would not when it comes to other people of color).

225. *See id.* (noting that a reparations program could expand and apply to other minority groups who experienced government exploitation).

226. *See id.* (“Does the Fujianese delivery man pedaling through the brownstones of Fort Greene owe a debt to the people whose food he carries? . . . And if the idea is that the newest arrivals to America will be persuaded to accept paying reparations as a cost of immigration . . . well, that’s a prescript for an even more dangerous political explosion.”).

227. *See* Coates, *supra* note 32 (illustrating the painful outcomes of our nation’s actions towards Black Americans).

228. *See id.* (“‘Negro poverty is not [W]hite poverty. Many of its causes and many of its cures are the same . . . But there are differences—deep, corrosive, obstinate differences—radiating painful roots into the community and into the family, and the nature of the individual. These differences are not racial differences. They are solely and simply the consequence of ancient brutality, past in justice, and the present prejudice.’”).

societies . . . They are deeply entrenched, intertwined, and insidious, and they form the foundation for structural racism. ²²⁹ These laws and policies create structural racism, defined as “[t]he overarching system of racial bias across institutions and society. These systems have given privileges to [W]hite people resulting in disadvantages to people of color.”²³⁰ Understanding how racism is built into various social structures and quantifying its long-term effects is fundamental to the anti-racist work of dismantling these barriers. ²³¹ “How do you put a cash value on hundreds of years of forced servitude?”²³²

Determining the most accurate method to calculate the monetary value of any reparations plan may be the most contested part; most formulations have produced numbers from as low as \$17 billion to as high as almost \$5 trillion. ²³³

The most often-quoted figure, though, is truly staggering, as anthropologist and author Jason Hickel notes in his 2018 book, ‘The Divide: Global Inequality from Conquest to Free Markets. It is estimated that the United States alone benefited from a total of 222,505,049 hours of forced labor between 1619 and the abolition of slavery in 1865. Valued at the US minimum wage, with a modest rate of interest, that is worth \$97 trillion today. ²³⁴ Other researchers calculate that the actual dollar amount is significantly higher than that proposed by Hickel. ²³⁵ Thomas Craemer, an associate professor at the University of Connecticut, believes the true cost is closer to \$19 trillion (in 2018 dollars). ²³⁶ A 2020 report noted that the estimated total is still conservative because Professor Craemer only dealt with slavery from the

229. Costigan et al., *supra* note 59.

230. *Being Antiracist*, *supra* note 9.

231. *Id.* (emphasizing how and why white people and people of color can both recognize the effects of structural racism and stop its perpetuation).

232. Hare & Criss, *supra* note 125 (citing the contention between lawyers, activists and academics when it comes to determining the value of slaves in American history).

233. *See id.* (demonstrating the lack of concurrence between experts in determining the present-day worth of slavery).

234. *Id.*

235. *See id.* (proposing research by other experts that indicates that the value of slave labor might actually be different than that proposed by Jason Hickel).

236. *See id.* (explaining they found \$19 trillion by estimating the size of the enslaved population, the total number of hours they worked and the wages at which that work should have been compensated, compounded by 3% interest).

country's founding through the Civil War, meaning the research does not account for all the periods of slavery in the United States, including the colonial period or during legalized segregation.²³⁷

C. Where The Money Would Come From

Advocates generally believe that there are three groups who should pay: federal and state governments, private businesses that benefited financially, and families whose wealth came from slavery.²³⁸ However, suing in mass for payment of reparations might go poorly.²³⁹ Another suggestion is to pass legislation forcing families to pay; besides the obvious unpopularity that proposal would engender, it may also be unconstitutional.²⁴⁰

D. The Arguments Against Reparations

There are many arguments against the payment of reparations.²⁴¹ "Opponents of reparations argue that all the slaves are dead, no White person living today owned slaves or that all the immigrants that have come to America since the Civil War don't have anything to do with slavery."²⁴² There are examples of Black people living in the United States today who are not descendants of slaves.²⁴³

237. *See id.* (reporting the missing periods of the colonial era and the time post-emancipation when segregation and discrimination was legal).

238. *See id.* (detailing how federal and state governments would be from those who supported and protected the institution of slavery. Additionally, the many huge, wealthy families in the South today that once owned a lot of slaves owe their wealth to the free labor of Black folks is feasible. So, when you identify the defendants, these families could be sued for reparations since they benefited directly from slavery).

239. *See* Harmeet Kaur, *Congress is Again Discussing Reparations for Slavery. It's a Complex and Thorny Issue*, CNN, <https://www.cnn.com/2021/02/18/us/congress-slavery-reparations-effort-trnd/index.html> [<https://perma.cc/MBV3-9CDK>] (last updated Feb. 18, 2021, 9:21 AM) (citing an argument made by law professor Malik Edwards, stating that in order to get individuals to pay for reparations it would have to be done through litigation).

240. *See* Hare & Criss, *supra* note 125 (explaining that at the federal level Congress doesn't have the power to go after these families, because doing so doesn't fall within its Commerce Clause powers, where Congress derives its power to regulate commerce among the states).

241. *See generally id.* (alluding to the counterpoints made by those who are against paying reparations to descendants of slaves).

242. *Id.*

243. *See id.* (providing former President Barack Obama as an example).

Last year, Senate Majority Leader Mitch McConnell said he opposed the idea, arguing “[n]one of us currently living are responsible” for what he called America’s “original sin.”²⁴⁴ When asked about reparations, McConnell responded: “I don’t think reparations for something that happened 150 years ago, for whom none of us currently living are responsible, is a good idea.”²⁴⁵ “We tried to deal with our original sin of slavery by fighting a civil war, by passing landmark civil rights legislation, elected an African American president,” Barack Obama, in 2008, McConnell said.²⁴⁶ “I don’t think we should be trying to figure out how to compensate for it. First of all, it would be hard to figure out whom to compensate.”²⁴⁷ Most African Americans find it impossible to trace their lineage prior to the Civil War because of slavery, so proving they descended from enslaved people would be too difficult.²⁴⁸

David Frum wrote a piece in 2014 for the *Atlantic* entitled “The Impossibility of Reparations,” which counters Coates’ essay.²⁴⁹ Frum warned that any reparations program would eventually expand to other groups, like Native Americans, and he feared

244. See Laurie Kellman, *McConnell on Reparations for Slavery: Not a ‘Good Idea’*, AP NEWS (June 18, 2019), <https://apnews.com/article/e79abc3b64e7400ea961f2fe99a73dc6> [<https://perma.cc/V9JC-LG34>] (identifying Senate Majority Leader Mitch McConnell as an opponent against reparations).

245. *Id.* (quoting Senate Majority Leader McConnell and his argument against reparations at a House hearing on reparations).

246. *Id.*

247. *Id.*

248. See Jamie Lovegrove, *SC’s Clyburn Pans Reparations, ‘Opportunity Zones’ as Unable to Address Racial Inequality*, POST AND COURIER (Mar. 5, 2019), https://www.postandcourier.com/politics/clyburn-pans-reparations-opportunity-zones-as-unable-to-address-racial/article_3bb2e8ba-3eb3-11e9-b75a-a376c84be23f.html [<https://perma.cc/MH35-NWA9>] (paraphrasing House Majority Whip Jim Clyburn stating, “‘pure reparations would be impossible to implement’”, as reparations would lead to contested debates about who would be eligible due to the sprawling family trees that have evolved in the succeeding generations since slavery was abolished); see also Hare & Criss, *supra* note 125 (arguing how impossible it would be to prove lineage).

249. See Hare & Criss, *supra* note 125 (opposing reparations); see also Frum, *supra* note 219 (listing the obstacles as the reparations program will expand to additional groups, the question of who qualifies for reparations is broad, side effects are unknown, granting reparations may create severe inequities, and the legitimacy of the project will quickly fade).

reparations could create their own brand of inequality.²⁵⁰ “Within the target population, will all receive the same? Same per person, or same per family? Or will there be adjustment for need? How will need be measured?”²⁵¹

And if reparations were somehow delivered communally and collectively, disparities of wealth and power and political influence within [B]lack America will become even more urgent. Simply put, when government spends money on complex programs, the people who provide the service usually end up with much more sway over the spending than the spending ‘s intended beneficiaries.²⁵²

Conservative activist Bob Woodson criticized reparations in a piece for the *Hill*, “[y]et another insult to [B]lack America that is clothed in the trappings of social justice.”²⁵³ Woodson also feels America made amends for slavery, so reparations are no longer needed, as reported to CNN.²⁵⁴

I wish they could understand the futility of wasting time engaging in such a discussion when there are larger, more important challenges facing many in the Black community . . . America atoned for the sin of slavery when they engaged in a civil war that claimed hundreds of thousands of lives. Let’s for the sake of argument say every Black person received \$20,000. What would that accomplish?²⁵⁵

Woodson fails to understand in his argument that the “fundamental purpose” of reparations is to “accentuate a

250. See Frum, *supra* note 219 (“With any program of reparations . . . other claimants will come forward. If African Americans are due payment for slavery and subjugation, what about Native Americans, who lost a whole continent?”).

251. *Id.*

252. *Id.*

253. See Robert L. Woodson, *Embracing Reparations Debases Blacks, Raises Troubling Questions*, HILL (Feb. 28, 2019, 8:00 AM), <https://thehill.com/opinion/civil-rights/431573-embracing-reparations-debases-blacks-raises-troubling-questions> [<https://perma.cc/JU3E-MHJB>] (elaborating on how advocates for reparations argue that it is the legacy and continuing consequences of slavery that explain the current wealth gap between Blacks and whites in America); see also Hare & Criss, *supra* note 125 (explaining the multitude of arguments against reparations).

254. See Hare & Criss, *supra* note 125 (highlighting that Bob Woodson feels America has done what it can to fix the aftermath of slavery, and thus, reparations are not going to do anything beneficial); see also Kaur, *supra* note 239 (conveying Woodson’s statement in regards to there being no need for reparations).

255. Hare & Criss, *supra* note 125.

common humanity between perpetrator and victims.”²⁵⁶ Writing an opinion piece for the *Los Angeles Times*, distinguished University of San Diego Law School Professor Roy Brooks states, “[p]roperly understood, a reparation is the revelation and realization of this common humanity. This same kind of understanding helped to persuade Congress to commission a 1980 study of the internment of Japanese Americans during World War II.”²⁵⁷ Professor Brooks continues, pointing out that “[t]he commission’s report resulted in a redress program that, not unlike Germany’s program, extended a governmental apology and redress payments in various forms to those who were relocated and imprisoned in camps.”²⁵⁸ Most significant was his conclusion that “Republicans and Democrats alike supported the authorizing legislation, the Civil Liberties Act of 1988. President Reagan signed it into law.”²⁵⁹

E. The Post Civil War Legacy Of Slavery Has Compounded A Multitude Of Harms To Black Americans

One of the most persistent and pervasive beliefs in the United States is that slavery ended in America in 1865.²⁶⁰ While this appears to be mostly correct legally, the reasons stipulated in the Articles of Secession for withdrawing from the Union, the moral superiority of the white race and the justification for owning Negro slaves, held firm in the South, and the belief that the antebellum social structure should continue past Reconstruction.²⁶¹ Jim Crow legislation later codified these attitudes and

256. See Roy L. Brooks, *Reparations are an Opportunity to Turn a Corner on Race Relations*, L.A. TIMES (Apr. 23, 2019, 10:14 AM), <https://www.latimes.com/opinion/op-ed/la-oe-brooks-reparations-20190423-story.html> [<https://perma.cc/K5AL-S4WA>] (advocating for the need for personal accountability or admission of guilt for a perpetrator’s wrongdoings).

257. *Id.* (providing Japanese Americans held in internment camps during World War II as an example of an atrocity that deserved reparations).

258. *Id.*

259. *Id.*

260. Compare U.S. CONST. amend. XIII, § 1 (abolishing slavery in the United States, ratified in 1865), with Solomon et al., *supra* note 103 (informing that the systematic exclusion of people of color continued far after 1850).

261. See *DECLARATION OF CAUSES: February 2, 1861. A Declaration of the Causes Which Impel the State of Texas to Secede from the Federal Union*, TEX. STATE LIBR. & ARCHIVES COMM’N, <https://www.tsl.texas.gov/ref/abouttx/secession/2feb1861.html> [<https://perma.cc/G57K-7J6F>] (stating for Texas that “[w]e hold as undeniable truths that the governments of the various States, and of the confederacy itself, were established exclusively by the [W]hite race, for

was given the blessing of the Supreme Court under *Plessey v. Ferguson*, holding laws permitting segregation as constitutional.²⁶² Separate but equal was a legal fiction that codified the realities of American life for nearly a century after the Civil War; segregation was legal everywhere, not just in the South.²⁶³ The time and energy spent battling legal segregation in the courts ignored racism's very real danger.²⁶⁴ The danger lies in the lack of understanding of one another because Black and white Americans speak different languages with no commonality.²⁶⁵ This is true, even at the highest levels of government.²⁶⁶ Donald Trump's former campaign chair in Mahoning County, Ohio, Kathy Miller, said, "[i]f you're Black and you haven't been successful in the last 50 years, it's your own fault."²⁶⁷ Miller continues, "You've had every opportunity; it was given to you . . . You've had the same schools everybody else went to. You had benefits to go to college that white kids didn't have. You had all the advantages and didn't take advantage of it. It's

themselves and their posterity; that the African race had no agency in their establishment; that they were rightfully held and regarded as an inferior and dependent race, and in that condition only could their existence in this country be rendered beneficial or tolerable. That in this free government all [W]hite men are and of right ought to be entitled to equal civil and political rights; that the servitude of the African race, as existing in these States, is mutually beneficial to both bond and free, and is abundantly authorized and justified by the experience of mankind, and the revealed will of the Almighty Creator, as recognized by all Christian nations.").

262. See *Plessey v. Ferguson*, 163 U.S. 537, 552 (1896) (justifying the judgment of the lower court, the Supreme Court avoided addressing the question as to the determination whether Homer Plessey was white or Colored, stating that the issue was best determined by the individual states to decide. Homer Plessey was classified by Louisiana as an "Octoroon" because he had one-eighth Black blood in him, and under the laws of the state at the time, he was considered to be Black).

263. See generally *id.* at 551 (elaborating on the idea of separate but equal is reasonable across the United States).

264. See generally *Brown v. Board at Fifty: "With an Even Hand"*, LIBR. OF CONG., <https://www.loc.gov/exhibits/brown/brown-aftermath.html> [<https://perma.cc/WA2H-KMYD>] (highlighting how resistance to desegregation resulted in open defiance and violent confrontations).

265. See DYSON, *supra* note 52, at 75 (proclaiming Black Americans are considered "simians" to white culture).

266. See *id.* (identifying the public discourse in Hillary Clinton's 2016 campaign calling specifically to African Americans as a mistake because the white working class was unincluded).

267. Paul Lewis & Tom Silverstone, *Ohio Trump Campaign Chair Kathy Miller Says There was "No Racism" Before Obama*, GUARDIAN (Sept. 22, 2016, 7:00 AM), <https://www.theguardian.com/us-news/2016/sep/22/trump-ohio-campaign-chair-no-racism-before-obama> [<https://perma.cc/JW7X-4AD6>] (listing additional controversial comments that further alienated Black voters from Trump).

not our fault, certainly.”²⁶⁸ She further said, “I don’t think there was any racism until Obama got elected.”²⁶⁹

The ultimate danger is when elected leaders of the federal government choose to ignore racism and deny the historical injustices that continue to impact Black people adversely. During the last four years, the Trump Administration aggressively began to roll back many enacted civil rights.²⁷⁰ Starting in February 2017, the Trump Administration began using previously unannounced directives to limit the Department of Justice’s use of its civil rights enforcement tool and loosen the Department of Education’s requirements on investigations.²⁷¹ In 2020, “Trump issued an executive order prohibiting federal agencies, federal contractors, and grantees from engaging in anti-discrimination workplace diversity trainings the administration deemed ‘divisive.’”²⁷² Acting through the Justice Department towards the end of his term, Trump “s[ought] to change interpretation of Title VI of the 1964 Civil Rights Act, which bars discrimination on the basis of race, color or national origin by recipients of federal funding.”²⁷³ On January 18, which coincided with the holiday remembering Dr. King’s call to action and celebrating his peaceful yet insistent call for racial justice, “Trump’s 1776 Commission issued a report

268. *Id.*

269. *Id.*

270. See Jessica Huseman & Annie Waldman, *Trump Administration Quietly Rolls Back Civil Rights Efforts Across Federal Government*, PROPUBLICA (June 15, 2017, 8:00 AM), <https://www.propublica.org/article/trump-administration-rolls-back-civil-rights-efforts-federal-government> [<https://perma.cc/4MUQ-48Q4>] (mentioning how the Trump administration limited federal civil rights enforcement).

271. See *id.* (acting jointly, the Justice Department’s Civil Rights Division and the Department of Education’s Office for Civil Rights rescinded Title IX guidance clarifying protections under the law).

272. *Trump Administration Civil and Human Rights Rollback*, LEADERSHIP CONF. ON CIV. AND HUM. RTS., <https://civilrights.org/trump-rollbacks/> [<https://perma.cc/3GDB-8MNJ>] (“[I]nstructing them to end anti-racist trainings that address white privilege and critical race theory—calling them ‘divisive, anti-American propaganda.’”).

273. Laura Meckler & Devlin Barrett, *Trump Administration Seeks to Undo Decades-Long Rules on Discrimination*, WASH. POST (Jan. 5, 2021, 9:37 PM), https://www.washingtonpost.com/education/civil-rights-act-disparate-impact-discrimination/2021/01/05/4f57001a-4fc1-11eb-bda4-615aaefd0555_story.html [<https://perma.cc/W5XC-YVQ3>] (showing how “[u]nder these rules, actions are considered discriminatory if they have a discriminatory effect, what’s known as a ‘disparate impact,’ on protected groups. Under the new version, only intentional discrimination would be prohibited.”).

calling for 'patriotic education,' comparing progressivism to fascism and communism, and justifying the nation's founding on the basis of slavery."²⁷⁴

White Americans' denial of historical facts has shaped a very different version of American history than what Black Americans have experienced.²⁷⁵ A recent study by the Public Religion Research Institute shows that sixty-six percent of white people think the government spends too much on Black and minority issues, and a higher percentage believe white people suffer discrimination and equally as big a problem as that suffered by Black folk and other minorities.²⁷⁶ In *Shelby v. Holder* the Supreme Court struck down the statute requiring federal permission prior to changing voting practices because it concluded such permission was no longer necessary.²⁷⁷ Although the preclearance rule was one reason for Black voting success, the Court denies the rule's contemporary value by failing to uphold its constitutionality.²⁷⁸ The Court's reasoning seemed circular and denied the facts; the Court was throwing the rule out because the very success of the rule counted as evidence that it was no longer needed.²⁷⁹ Eligible Black voters were successfully voting because they were being protected.²⁸⁰ Justice Ruth Bader Ginsburg torched her conservative colleagues with a blistering dissent, arguing that "[t]hrowing out preclearance when it has

274. *Trump Administration Civil and Human Rights Rollback*, *supra* note 272 (rolling back existing civil rights legislation).

275. See TNJ Staff, *How Black History Has Shaped the African American Experience*, NETWORK J. (Nov. 21, 2010), <https://tnj.com/how-black-history-has-shaped-african-american-experience/> [<https://perma.cc/75EK-J5WT>] (noting that while the perspective varies, it does not change reality).

276. See Daniel Cox & Robert P. Jones, *Attitudes on Child and Family Wellbeing: National and Southeast/Southwest Perspectives*, PRRI (Sept. 18, 2017), <https://www.prii.org/research/poll-child-welfare-poverty-race-relations-government-trust-policy/> [<https://perma.cc/T63V-RERL>] (researching attitudes of white Americans feeling at least some affinity with members of racial, ethnic, and religious minority communities in the United States).

277. See *Shelby Cnty. v. Holder*, 570 U.S. 529, 557 (2013) (eliminating the coverage formula because the formula was forty years old and no longer reflected contemporary issues).

278. See *id.* at 552–53 (identifying the rule requiring states "preclear" voting changes as part of Section Four of the Voting Rights Act).

279. See *id.* (acknowledging that voter disparities were improved primarily because of protections under the Voter's Rights Act, but questioning its validity because of lesser degrees of contemporary voter disparities).

280. See *id.* (noting the success of the Voter's Rights Act).

worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.”²⁸¹

F. The Dangers And Perils When Not Staying Vigilant

The current belief among most Americans is that the specter of slavery continues to affect Black people in America.²⁸² Adverse results from the legacy of slavery continue to affect many aspects of Black Americans’ lives today.²⁸³ The disparities are far ranging and all-encompassing and are disproportionate when compared to white America.²⁸⁴ These issues include poverty, which brings its own myriad of related issues such as underfunded public education, higher unemployment, social discrimination, poorer healthcare, limited access to basic services, and limited avenues of upward mobility.²⁸⁵ The success record of racial equality legislation has met with mixed results.²⁸⁶ Subsequent administrations weakened civil rights legislation intended to foster racial equality enacted during the Lyndon B. Johnson era.²⁸⁷ The evisceration of the Voting Rights Act has already

281. *Id.* at 590.

282. See generally Juliana Menasce Horowitz, *Most Americans Say the Legacy of Slavery Still Affects Black People in the U.S. Today*, PEW RSCH. CTR. (June 17, 2019), <https://www.pewresearch.org/fact-tank/2019/06/17/most-americans-say-the-legacy-of-slavery-still-affects-black-people-in-the-u-s-today/> [<https://perma.cc/ST8F-CE8A>] (recognizing that there are wide gaps along racial and partisan lines when polling Americans’ attitudes and views of the impact of slavery on Black Americans’ position in society today).

283. Cf. Costigan et al., *supra* note 59 (citing a variety of aspects negatively influenced by the legacy of slavery including housing, employment, education, voting, and health care).

284. See *id.* (identifying how structurally based racial bias, predicated on policy, disadvantages Black America while providing advantage to white America).

285. Cf. *id.* (defining structural racism as an “[o]verarching system of racial bias across institutions and society.”).

286. See Clarence Page, *Reparations by Any Other Name*, TENNESSEAN (May 29, 2014, 11:00 PM), <https://www.tennessean.com/story/opinion/columnists/2014/05/30/reparations-name/9720263/> [<https://perma.cc/KQS2-EKA4>] (stymieing beneficial federal legislation aimed at balancing racial inequality by some state legislatures).

287. See Mehra Baradaran, *A Bad Check for Black America*, BOS. REV. (Nov. 9, 2017), <http://bostonreview.net/class-inequality-race/mehra-baradaran-bad-check-black-america> [<https://perma.cc/EL9X-E7ZM>] (politicking during the Nixon era effectively cannibalized much of the budget earmarked for the Office of Equal Opportunity Employment. Focused messaging served to further segregate the Black community from the collective poor providing empty promises of financial independence. The same messaging has been used by subsequent administrations).

occurred, and the Fair Housing Act could conceivably fall next.²⁸⁸ Affirmative action is only a vestige of its former self.²⁸⁹ “Aid to Families Dependent Children was originally written largely to exclude Blacks—yet by the 1990s it was perceived as a giveaway to Blacks.”²⁹⁰ Although the ACA text is race-neutral, Rush Limbaugh fervently described it as reparations.²⁹¹ The ACA made Medicaid expansion optional, meaning “[p]oor blacks in the former Confederate states do not benefit from it.”²⁹² Eventually, the ACA will extend to those individuals unincorporated.²⁹³ However, ACA’s critics ignore the fact that “29.8 million people would lose their health insurance if the . . . Act were repealed—more than doubling the number of people without health insurance.”²⁹⁴ Subsequently, families diverting additional money to secure insurance away from the economy would cause a projected loss of 1.2 million jobs across multiple industries, not just health care.²⁹⁵

288. TA-NEHISI COATES, *WE WERE EIGHT YEARS IN POWER: AN AMERICAN TRAGEDY 198* (2017) (ignoring the Supreme Court’s historical perspective regarding the 1960s civil rights reforms).

289. *See id.*; *see also* Page, *supra* note 286 (alluding to white backlash because affirmative action comes with a cost and is interpreted as “reverse discrimination”).

290. COATES, *supra* note 288; *see Aid to Families with Dependent Children (AFDC) and Temporary Assistance for Needy Families (TANF) - Overview*, ASPE, <https://aspe.hhs.gov/aid-families-dependent-children-afdc-temporary-assistance-needy-families-tanf-overview> [<https://perma.cc/CU8W-AQ2J>] (“Aid to Families with Dependent Children (AFDC) was established by the Social Security Act of 1935 as a grant program to enable states to provide cash welfare payments for needy children who had been deprived of parental support or care because their father or mother was absent from the home, incapacitated, deceased, or unemployed.”); *see also* Alma Carten, *How Racism Has Shaped Welfare Policy in America Since 1935*, AP NEWS (Aug. 22, 2016), <https://apnews.com/article/fbd5d3c83e3243e9b03e46d7cb842eaa> [<https://perma.cc/XL9T-J3Y3>] (“By the late 1990s efforts of reforms targeting the AFDC program shifted to more nuanced forms of racism with claims that the program encouraged out-of-wedlock births, irresponsible fatherhood and intergenerational dependency.”).

291. *See* COATES, *supra* note 288 (explaining Rush Limbaugh’s misunderstanding about the ACA); *see also* Page, *supra* note 286 (showing how Limbaugh sees the ACA as a civil rights bill allocating money “from rich to poor.”).

292. *Id.*; *see* Page, *supra* note 286 (noting optional Medicaid expansion rebuffed by states leave low-wage workers uninsured, but a disproportionate amount of those workers are Black).

293. COATES, *supra* note 288 (comparing the Affordable Care Act to Social Security).

294. *How Would Repealing the Affordable Care Act Affect Health Care and Jobs in Your State?*, ECON. POL’Y INST., <https://www.epi.org/aca-obamacare-repeal-impact/> [<https://perma.cc/23Z7-3UP8>].

295. *See id.* (cascading economic effects in forcing families to spend more money on insurance and less on necessities).

G. The Lasting Harmful Effects Derived From Inequal Wealth Distribution

Since 1970, the gap in household income between white and Black families has remained essentially unchanged.²⁹⁶ A study of children born in America from 1955 to 1970 found that only four percent of white children lived in poor neighborhoods compared to sixty-two percent of Black children.²⁹⁷ The same study showed that nothing changed one generation later.²⁹⁸ Research shows white household worth exceeds Black household worth by twenty-fold, while twice as many Black households have negative or zero wealth compared to white homes.²⁹⁹ Generations pass their wealth down to later generations through monetary inheritances and property.³⁰⁰ Families secure economic mobility for future generations when they accumulate wealth.³⁰¹ Disparate opportunities for Black Americans to build wealth through “[h]ome equity, high-wage jobs, and higher

296. See Coates, *supra* note 32 (estimating decreasing rates of Black poverty overall but noting the disparity in earning power between white and Black families persists).

297. See *id.* (accounting for another element involving child rearing where race is a distinguishing factor. A sociologist at New York University, Patrick Sharkey, held the study).

298. *Id.*

299. See *id.* (quantifying both the disparity between net worth and zero or negative net worth place Black families in a more financially vulnerable position when unplanned emergencies arise).

300. See Costigan et al., *supra* note 59 (discerning the vehicles used to pass the majority of intergenerational wealth).

301. See *id.* (advancing the idea that generational wealth does provide substantial advantages for children and grandchildren); see also TRINA WILLIAMS, THE HOMESTEAD ACT: A MAJOR ASSET-BUILDING POLICY IN AMERICAN HISTORY 8–11 (2000) (detailing the economic legacy of the Homestead Act. From the time of the first homestead granted in 1868 to the passage of the Federal Land Policy and Management Act of 1976 which repealed it, over 1.6 million homestead applications were processed giving more than 270 million acres of land. The author notes that for reference purposes, this is close to the total acreage of Texas and California combined. By the year 2000, the number of homestead recipients living in America was about a quarter of its population, roughly forty-six million people. Until Emancipation, enslaved Blacks were not legally able to own land as non-citizens. The reality was very few Black families were able or permitted to participate in a government asset-building policy as provided by the Homestead Act. The failure of equitable land distribution, combined with government policies designed to tie Black families to the land they previously toiled as slaves through sharecropping, ensured that very few for newly freed Black families would have the opportunity to get “[s]omething of lasting value that potentially could change a person’s economic status. Not only were crops produced and sold for money, but the land itself could increase in value as areas developed. The Homestead Act made it possible for a family of modest means to create a better life for the next generation.”).

education” foster the existing wealth gap.³⁰² Federal housing policies enacted during the 20th century account for nearly the entire imbalance of wealth.³⁰³ Compared to Black families, white families have significantly more wealth.³⁰⁴ On average, Black families’ net worth was approximately ten times smaller than white families’ net worth in 2016.³⁰⁵ “For people in the top 10% of household income, White families have \$1,789,300 in overall median net worth compared to \$343,160 for Black families.”³⁰⁶

Nationally, people of color are more likely to live in poverty than their white peers: While 10% of white, non-Hispanic Americans live in poverty, 23% of Black Americans do.³⁰⁷ Because many white families balk at buying homes in predominantly Black neighborhoods, home value appreciation—a major source of wealth—is inhibited for Black families.³⁰⁸

“The devaluation of Black people’s work has long-term effects.”³⁰⁹ Black women earn sixty-two cents for each dollar non-Hispanic white men make, based on full-time, year-round work.³¹⁰ In data culled from the National Women’s Law Center, Black women have an average cumulative loss of \$946,120 in

302. Costigan et al., *supra* note 59 (enumerating the various barriers that created the wealth gap and cause it to persist).

303. *See id.* (confirming home and property ownership creates substantial wealth).

304. *See id.* (stating factual data supported by research).

305. *See id.* (comparing the average Black family’s net worth of \$17,150 to the average white family’s net worth of \$171,000).

306. *Id.*

307. *S1701: Poverty Status in the Past 12 Months*, U.S. CENSUS BUREAU, (2018), <https://data.census.gov/cedsci/table?q=poverty&tid=ACSS1Y2018.S1701&hidePreview=true> [<https://perma.cc/ZSG8-SGJU>] (citing poverty indexes throughout the U.S.).

308. Richard D. Kahlenberg & Kimberly Quick, *The Government Created Housing Segregation. Here’s How the Government Can End It*, AM. PROSPECT (July 2, 2019), <https://prospect.org/civil-rights/government-created-housing-segregation.-government-can-end-it/> [<https://perma.cc/3BGK-RSJQ>] (explaining how residential segregation negatively affects home value appreciation of Black families).

309. Costigan et al., *supra* note 59.

310. Shafaq Patel, *Panel Discusses Wage Gap on Black Women’s Equal Pay Day*, BOS. BUS. J. (Aug. 14, 2020, 6:21 AM), <https://www.bizjournals.com/boston/news/2020/08/14/black-women-s-equal-pay-day-panel-discusses-wage-g.html> [<https://perma.cc/QJ8R-ZEZ4>] (calculating the wage disparity).

income in their lifetimes.³¹¹ Predatory lenders and for-profit schools also contribute to the wealth gap.³¹² They target Black families with risky and overpriced products, while banks and other lenders have targeted Black families with expensive and unfair subprime loans that often resulted in foreclosure, especially during the 2008 housing crash.³¹³ Without as much generational wealth, Black students must take on more (and often riskier) debt to access higher education, making it harder for them to build wealth after graduation.³¹⁴ For-profit schools also target older part-time Black students; 65% of Black borrowers at for-profit four-year colleges eventually drop out, responsible for paying down debts that did not result in a degree.³¹⁵

H. The Lasting Harmful Effects Derived From Inequal Housing Opportunities

Throughout the 20th century, federal housing policy and practices excluded Black families from opportunities to build home equity and accumulate wealth, creating generational repercussions.³¹⁶ In contrast, federal intervention, along with investment, has assisted in expanding homeownership and

311. See *Women's Earnings - The Pay Gap: Quick Take*, CATALYST (Mar. 2, 2020), <https://www.catalyst.org/research/womens-earnings-the-pay-gap/> [<https://perma.cc/37VL-VK7H>] (calculating based on the average earnings lost during a forty-year period).

312. See Jen Mishory, et al., *How Student Debt and the Racial Wealth Gap Reinforce Each Other*, CENTURY FOUND. (Sept. 9, 2019), <https://tcf.org/content/report/bridging-progressive-policy-debates-student-debt-racial-wealth-gap-reinforce/?agreed=1> [<https://perma.cc/X6QF-ZH2E>] (discussing intentional targeting by for-profit colleges of students of color). See generally Larry Schwartzol, *Predatory Lending: Wall Street Profited, Minority Families Paid the Price*, ACLU (Sept. 16, 2011, 4:35 PM), <https://www.aclu.org/blog/racial-justice/race-and-economic-justice/predatory-lending-wall-street-profited-minority/> [<https://perma.cc/K7BN-RKJA>] (identifying both home and educational loans as a basis for predatory lending aimed squarely at minorities. Predatory lending imposes unfair, deceptive, or abusive loan terms on a borrower.).

313. See Schwartzol, *supra* note 312 (demonstrating the negative effects of predatory lending on minority families).

314. See Mishory et al., *supra* note 312 (noting Black parents also take on riskier and more expensive higher education student loans to help their children).

315. See *id.* (distinguishing additional lending practices that focus within racial categories).

316. See Solomon et al., *supra* note 103 (calling out historical housing policies that have excluded families of color); see also Kahlenberg & Quick, *supra* note 308 (highlighting that homeownership not only influences wealth generation but access to better access to better educational opportunities for children as well).

affordable housing for countless white families.³¹⁷ The Federal Housing Administration encouraged segregation, effectively enshrining prejudices and discriminatory attitudes as public policy.³¹⁸ The Home Owner's Loan Corporation (HOLC) denied whole neighborhoods and portions of cities housing loans.³¹⁹ Official government "redlining" policies denied Blacks routes to obtain mortgages to purchase their homes.³²⁰

Through its HOLC, the federal government "redlined" Black neighborhoods, using red ink on maps to indicate the neighborhoods to lenders.³²¹ In doing so, the HOLC denied Black families access to mortgages and capital investment based strictly on where they lived.³²² Between 1934 and 1962, of the \$120 billion in loans made by the Federal Housing Administration, only 2% were distributed to non-white families.³²³ Over eighty years later, three out of four previously "redlined" neighborhoods are still economically struggling today.³²⁴ Black Americans still feel the effects of redlining, with

317. See Solomon et al., *supra* note 103 (analyzing the federal government's role in fortifying the racial inequality present in the U.S. housing system).

318. See *Banks Continue to Deny Home Loans to People of Color*, EQUAL JUST. INITIATIVE (Feb. 19, 2018), <https://ej.org/news/banks-deny-home-loans-to-people-color/> [https://perma.cc/8Q3V-WR6S] (discussing the history and legacy of redlining. The federal Home Owner's Loan Corporation deemed neighborhoods with Black individuals and families "hazardous" for bank lending.).

319. See *id.* (providing a brief history of the labeling of some neighborhoods as "hazardous" to loans by the federal Home Owner's Loan Corporation and its lasting impact on the racially segregated housing seen across the country today).

320. See Costigan et al., *supra* note 59 ("[T]he HOLC denied Black families access to mortgage and capital investment based strictly on where they lived.").

321. See *Banks Continue to Deny Home Loans to People of Color*, *supra* note 318 (labeling these redlined neighborhoods as "hazardous" to bank lenders, effectively barring African Americans from loan eligibility). See generally BRUCE MITCHELL & JUAN FRANCO, HOLC "REDLINING" MAPS: THE PERSISTENT STRUCTURE OF SEGREGATION AND ECONOMIC INEQUALITY 5–7 (2018), https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf [https://perma.cc/K7V5-XHUC] (providing context on the residential security maps which evaluated the lending risks for certain people).

322. See MITCHELL & FRANCO, *supra* note 321 (explaining the redlined maps were used by loan officers to evaluate risks associated with mortgage lending, leaving the minority-dense, "hazardous" neighborhoods without the same loan opportunities as white neighborhoods).

323. See Solomon et al., *supra* note 103 (naming redlining as the reason for the low distribution of loans to Black families, because they were labeled as financially risky and a threat to local property values).

324. See Michele Lerner, *Report: Overall U.S. Homeownership Rate Rises, but Drops Among Blacks*, WASH. POST (Mar. 19, 2020),

only around 41% owning a home between 2016 and 2019 compared to about 71% of white Americans.³²⁵ America legally sanctioned discrimination in housing against Black Americans until the 1968 passage of the Fair Housing Act.³²⁶ However, the 1968 act lacked many enforcement provisions, and it did little to deter discriminatory housing practices.³²⁷ Although the Fair Housing Act was amended and strengthened in 1988, the National Fair Housing Alliance estimates there continues to be over 4 million incidents of housing discrimination each year.³²⁸

“The GI Bill and federal construction loans built a strong White middle class. Explicitly racist policies prevented Black families from purchasing homes and segregated them from White neighborhoods.”³²⁹ After returning home from the war, the government’s GI Bill was a vehicle white veterans used to purchase their homes; this program, however, was denied to Black veterans because banks would not provide mortgages to homes in Black neighborhoods.³³⁰ “Black veterans were also prevented from buying into White suburbs because of formal and informal racism including restrictive deed covenants that prohibited the sale of properties in certain neighborhoods to non-

<https://www.washingtonpost.com/business/2020/03/19/report-overall-us-homeownership-rate-rises-drops-among-blacks/> [<https://perma.cc/8CUG-ZFPH>] (comparing homeownership rates among different racial groups in the United States).

325. *Id.*

326. *See After 20 Years, Fair Housing Teeth*, N.Y. TIMES (Aug. 8, 1988), <https://www.nytimes.com/1988/08/08/opinion/after-20-years-fair-housing-teeth.html> [<https://perma.cc/27VQ-YLKN>] (highlighting the Fair Housing Act of 1968’s attempt at addressing the suffering caused by housing discrimination and the necessary 1988 amendments made to assist those efforts).

327. *See id.* (highlighting that the Department of Housing and Urban Development was not as effective in battling discrimination since its powers were limited to “conference, conciliation or persuasion.”).

328. *See SHANTI ABEDIN ET AL., NAT’L FAIR HOUS. ALL., MAKING EVERY NEIGHBORHOOD A PLACE OF OPPORTUNITY: 2018 FAIR HOUSING TRENDS REPORT 11* (2018), https://nationalfairhousing.org/wp-content/uploads/2018/04/NFHA-2018-Fair-Housing-Trends-Report_4-30-18.pdf [<https://perma.cc/ZU4H-HTSE>] (explaining that despite the Fair Housing Act’s purpose, modern neighborhoods are, “more segregated than the way they were in 1918”).

329. Costigan et al., *supra* note 59.

330. *See* David Callahan, *How the GI Bill Left Out African Americans*, DEMOS (Nov. 11, 2013), <https://www.demos.org/blog/how-gi-bill-left-out-african-americans> [<https://perma.cc/2VGX-84Y2>] (emphasizing how the GI Bill helped in the long term with white wealth because white veterans, unlike their Black counterparts, had the opportunity to utilize government guaranteed housing loans).

Whites.”³³¹ Local officials charged with distributing benefits paid for by the GI Bill ensured they were given out disproportionately to white applicants, especially in the South.³³²

“Socially engineered residential segregation” was not limited to local government because the practices of both the state and federal governments socially segregated residential areas as well.³³³ These federal, state, and local government policies were intended to keep Blacks in segregated neighborhoods, seen as less desirable, especially in the major metropolitan areas.³³⁴ Richard Rothstein writes that a policy originating from the New Deal, known as the “neighborhood composition rule,” said that public housing projects should not change the racial composition of the neighborhoods.³³⁵ Authors Costigan, Garnett and Troiano note that during the middle of the last century “the US federal government guaranteed construction loans to subdivision developers[] on the condition that homes not be sold to Black families . . . [and] included a clause in the deed not to resell to Black Americans or others who would introduce an

331. Costigan et al., *supra* note 59.

332. *See id.* (showcasing how Black Americans were not only limited by federal and state practice, but also local government officials who wished to keep neighborhoods segregated); Brandon Weber, *How African American WWII Veterans Were Scorned by the G.I. Bill*, PROGRESSIVE MAG., (Nov. 10, 2017, 5:00 AM), <https://progressive.org/dispatches/how-african-american-wwii-veterans-were-scorned-by-the-g-i-b/> [<https://perma.cc/R66C-9MFY>] (giving background on how the federal government failed to help those Black American servicemen after they came home from combat as many were denied college admission, housing and business loans, and excluded from training programs).

333. *See id.* (“A variety of federal, state and local government policies limited housing options for Black Americans, intentionally steering or keeping them in declining and segregated neighborhoods.”).

334. *See* Richard Rothstein, *The Racial Achievement Gap, Segregated Schools, and Segregated Neighborhoods – A Constitutional Insult*, ECON. POL’Y. INST. (Nov. 12, 2014), <https://www.epi.org/publication/the-racial-achievement-gap-segregated-schools-and-segregated-neighborhoods-a-constitutional-insult/> [<https://perma.cc/EUP7-5AT4>] (discussing the notion that the federal government “led in the establishment and maintenance” of the racially segregated housing we see today. State and local governments both created policies and participated in federally-funded housing programs in a way that reinforced racially segregated housing.).

335. *See id.* (“Not only in the South, but in the Northeast, Midwest, and West, projects were officially and publicly designated either for whites or for blacks. Some projects were “integrated” with separate buildings designated for whites or for blacks. Later, as white families left the projects for the suburbs, public housing became overwhelmingly black and in most cities was placed only in black neighborhoods, explicitly so.”).

‘incompatible racial element’ to neighborhood schools.”³³⁶ The lingering effects of government-sanctioned, or imposed segregation, continue to negatively impact the Black residents of these neighborhoods through limited access to education, transportation, fresh food, jobs, and quality health care.³³⁷

Because of segregation, middle-class Black families are more likely to live in high-poverty neighborhoods than low-income white families, resulting in the likelihood that children attend high-poverty schools.³³⁸ State and local governments have a history of denying adequate public services to Black neighborhoods, some of which continues today, including providing less frequent garbage removal; re-zoning residential areas for mixed-use, including industrial or toxic sites; and poorly maintaining infrastructure.³³⁹

I. The Lasting Harmful Effects Derived From Education Discrimination

A long history of federal, state, and local housing policies and practices creating segregated neighborhoods also created segregated schools, which limited the education of Black people and resulted in the educational disparities seen today.³⁴⁰ In the

336. Costigan et al., *supra* note 59. *Accord* Rothstein, *supra* note 334 (mentioning the mass production builders and developers recruited nationwide by the Federal Housing and Veterans Administrations who received federal loan guarantees conditioned on the prohibition of sales to Black buyers).

337. *See* Kahlenberg & Quick, *supra* note 308 (asserting where people live effects their access to “transportation, education, employment opportunities, and good health care.” Black-white segregation is a driving factor in the enormous wealth gap seen between Black and white Americans.); *see also* Donald F. Schwarz, *What’s the Connection Between Residential Segregation and Health?*, ROBERT WOOD JOHNSON FOUND. (Apr. 3, 2018, 4:00 PM), <https://www.rwjf.org/en/blog/2016/03/whats-the-connection-between-residential-segregation-and-health.html> [<https://perma.cc/699A-VGTP>] (contributing to the discussion of the impact of residential segregation on community health, employment, and physical inactivity).

338. *See* Kahlenberg & Quick, *supra* note 308 (explaining that racial segregation forces low-income Black families out of socioeconomically integrated schools which leads to less employment levels and earnings).

339. *See* Rothstein, *supra* note 334 (explaining how private prejudices were reflected and supported by government practices of inadequate public services. The “slum conditions” that resulted from these government practices came to be viewed as characteristics of Black residents themselves and reinforced private prejudices used to justify racial segregation.).

340. *See id.* (asserting that education policy is constrained by housing policy because it is impossible to desegregate schools without also desegregating “both low-income and affluent neighborhoods”).

decades after the Civil War, Southern colleges prohibited Black students from attending due to legal segregation, and they had limited access to Northern schools because of quota systems.³⁴¹ In 1896, the U.S. Supreme Court ruled in *Plessy v. Ferguson* that separate but equal facilities did not violate the U.S. Constitution's Fourteenth Amendment, legally sanctioning the separation of facilities based on race.³⁴²

The GI Bill excluded Black veterans from many of its college benefits.³⁴³ Especially in the South, Black veterans were denied equal access to college admission, denied benefits, and steered into vocational schools.³⁴⁴ In 1954, the U.S. Supreme Court in *Brown v. Board of Education* outlawed racial segregation in public education.³⁴⁵ However, U.S. public schools are still largely separate and unequal.³⁴⁶

341. See *Brown v. Bd. of Educ.*, 347 U.S. 483, 487–88, 489 (1954) (clarifying the intention of the post-Civil War amendments to remove any legal distinctions among United States citizens, including race. Despite the amendments, segregation based on race continued to be enforced in public education.); see also Leslie M. Harris, *The Long, Ugly History of Racism at American Universities*, NEW REPUBLIC, (Mar. 26, 2015), <https://newrepublic.com/article/121382/forgotten-racist-past-american-universities> [<https://perma.cc/SX3D-W4GT>] (highlighting the use of quota systems to limit groups of individuals in the Northern schools based on race and religion. Limiting enrollment of minority groups “reinforced racial and religious hierarchies until the late-twentieth century.”).

342. *Plessy v. Ferguson*, 163 U.S. 537, 543 (1896).

343. See Joseph Thompson, *GI Bill Opened Doors to College for Many Vets, but Politicians Created a Separate One for Blacks*, CONVERSATION, (Nov. 10, 2019, 9:45 AM), <https://theconversation.com/gi-bill-opened-doors-to-college-for-many-vets-but-politicians-created-a-separate-one-for-blacks-126394> [<https://perma.cc/EP54-CAFU>] (showing how the education benefits of the GI Bill, which was signed into law by President Roosevelt on June 22, 1944, were purposefully thwarted for most of the one million Black veterans of World War II).

344. See *id.* (reporting U.S. representative John Rankin of Mississippi, a “staunch segregationist,” enabled the local Veterans Administration to dictate how funds would be distributed among veterans. This resulted in Black veterans being prejudiced by white officials.).

345. See *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954) (ruling the doctrine of “separate but equal” in public education a violation of the Constitution because it deprived individuals of “the equal protection of the laws guaranteed by the Fourteenth Amendment.”).

346. See Brad Bennett, *Weekend Read: 66 Years After Brown v. Board, Schools Across the South Still Separate and Unequal*, S. POVERTY L. CTR. (May 16, 2020), <https://www.splcenter.org/news/2020/05/16/weekend-read-66-years-after-brown-v-board-schools-across-south-still-separate-and-unequal> [<https://perma.cc/PTR7-Q7UH>] (highlighting that Black students, even decades after the *Brown* decision which declared segregation in public schools as unconstitutional, are still experiencing separate and unequal schooling. Black students have lower quality curriculum, unexperienced educators, fewer financial resources, and are more likely to be disciplined severely in comparison to white students.).

Twenty-eight percent of Black students attend a high-poverty school in which 90% of the students are students of color.³⁴⁷ Funding public schools through property taxes exacerbates inequality because funding relies heavily on local property taxes; schools in affluent white communities often have better-paid teachers, better facilities, and more opportunities for students.³⁴⁸ In 2016, mostly white school districts received \$23 billion more than mostly non-white school districts, despite serving about the same number of children.³⁴⁹ In Texas, one apparent area where Black children outpace white children in education is the disproportionately higher rate at which school administrators physically restrain them.³⁵⁰

347. See Reed Jordan, *Millions of Black Students Attend Public Schools that Are Highly Segregated by Race and by Income*, URB. INST. (Oct. 30, 2014), <https://www.urban.org/urban-wire/millions-black-students-attend-public-schools-are-highly-segregated-race-and-income> [<https://perma.cc/H3PC-ULZN>] (reporting the relationship between racial segregation and poverty segregation. “As racial segregation in schools increases, so does the concentration of poverty.”)

348. See Cory Turner et al., *Why America’s Schools Have a Money Problem*, NPR (Apr. 18, 2016, 5:00 AM), <https://www.npr.org/2016/04/18/474256366/why-americas-schools-have-a-money-problem> [<https://perma.cc/AZJ5-W5HS>] (recognizing the various educational funding provided throughout the United States based on property taxes. In Chicago, school districts spend \$9,794 per student, while another nearby district spends about three times as that. Property taxes are used to fund education because it is considered a “public obligation.”); see also LINDSEY BURKE & JUDE SCHWALBACH, HOUSING REDLINING AND ITS LINGERING EFFECTS ON EDUCATION OPPORTUNITY 11 (2021) https://www.heritage.org/sites/default/files/2021-03/BG3594_1.pdf [<https://perma.cc/9BQJ-HAWW>] (discussing how the federal government tend to lend out more mortgages to white borrowers than Black borrowers, allowing racial segregation to be reinforced in housing and neighborhoods. “[B]y dictating which public schools children may attend based on where they live, these boundaries limit education opportunity for families within the same neighborhood. Some even argue that these boundaries appear similar to those used for redlining.”).

349. See Laura Meckler, *Report Finds \$23 Billion Racial Funding Gap for Schools*, WASH. POST (Feb. 25, 2019, 11:01 PM), https://www.washingtonpost.com/local/education/report-finds-23-billion-racial-funding-gap-for-schools/2019/02/25/d562b704-3915-11e9-a06c-3ec8ed509d15_story.html [<https://perma.cc/SAZ4-X5W3>] (“The funding gap is largely the result of the reliance on property taxes as a primary source of funding for schools. Communities in overwhelmingly white areas tend to be wealthier, and school districts’ ability to raise money depends on the value of local property and the ability of residents to pay higher taxes.”).

350. See Krista Torralva, *Following Statewide Trend, Northside, North East ISDs Restrain Black and Special Ed Children at Disproportionate Rates*, *Report Finds*, SAN ANTONIO EXPRESS NEWS (Dec. 26, 2020, 4:00 AM), <https://www.expressnews.com/news/education/article/Following-statewide-trend-Northside-North-East-15828699.php> [<https://perma.cc/YV4A-NHHX>] (reporting that Black and disabled students were disproportionately represented in restraint incidents in two San Antonio area independent school districts, Northside and North East. Northside ISD’s Black student population

J. The Lasting Harmful Effects Derived From Voter Suppression And Disenfranchisement

Many laws have worked to suppress Black Americans' right to vote, despite the ratification of the Fifteenth Amendment in 1870, which specifically stated that the government could not deny the right to vote on the basis of race, and the passage of the Voting Rights Act of 1965, which prohibited many discriminatory practices in states with a history of voter discrimination.³⁵¹ As a result, Black citizens still face numerous barriers that suppress their ability to elect people to political office with similar interests and experiences, enabling white individuals' to continue dominating political leadership positions.³⁵²

The suppression of the Black vote started in the 19th century.³⁵³ By using poll taxes, unfair literacy tests, "White

was about 6.4 percent in the 2018-19 school year, yet more than 14 percent of the total restraints involved Black students).

351. Compare U.S. CONST. amend. XV, § 1 ("The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.") and Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (1965) ("No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on the account of race or color.") with Solomon et al., *supra* note 103 (explaining how lawmakers and the court system have enforced discriminatory voting practices against Black voters, regardless of the expansion of rights that allowed Black Americans to vote. After the Fifteenth Amendment was ratified, people of color were excluded from electoral participation in order to "ensure that the nation's democratic institutions and policies would remain racially homogenous." While the Voting Rights Act of 1965 was to curtail structural racism in voting, states have passed bills in the 21st century "developing innovative new strategies for voter suppression.").

352. See Alexa Lardieri, *Despite Diverse Demographics, Most Politicians Are Still White Men*, U.S. NEWS & WORLD REP. (Oct. 24, 2017), <https://www.usnews.com/news/politics/articles/2017-10-24/despite-diverse-demographics-most-politicians-are-still-white-men> [<https://perma.cc/PF3P-W3Z9>]; see also Vann R. Newkirk II, *Voter Suppression Is Warping Democracy*, ATL. (Jan. 17, 2018), <https://www.theatlantic.com/politics/archive/2018/07/poll-prri-voter-suppression/565355/> [<https://perma.cc/R2BA-V2H5>] (demonstrating the various voting barriers that Black individuals experience, such as voter-ID requirements, changes to polling-site locations, deadline issues, and voting restrictions due to work schedules, were significantly more prominent in the people of color community than the white community).

353. See Farrell Evans, *How Jim Crow-Era Laws Suppressed the African American Vote for Generations*, HIST. (May 13, 2021), <https://www.history.com/news/jim-crow-laws-black-vote> [<https://perma.cc/T2JJ-2PG5>] (recognizing that despite the ratification of the Fifteenth Amendment in 1870, southern states continued to restrict Black individuals from voting through measures that

primaries,” intimidation, and violence, Southern states severely restricted Black voting starting in the late 1800s.³⁵⁴ During Reconstruction, over half a million Black men registered to vote; however, by 1940 only three percent of voting-age Black men and women in the South were registered because of racist voting restrictions.³⁵⁵

While it was predominant in the South to have voter suppression laws, the Western states, such as Oregon, also denied suffrage to most people of color until the mid-20th century.³⁵⁶ Policies and laws continue to suppress Black voters, as recent voter identification laws, voter roll purging, reduced registration opportunities, polling places, and early voting, and a recent U.S. Supreme Court ruling fuel a resurgence of voter suppression.³⁵⁷

did not explicitly restrict them by race, but it was evident why the measures were put in place. Legislators desired to keep white supremacy in the electoral process.)

354. See *Race and Voting*, CONST. RTS. FOUND., <https://www.crf-usa.org/brown-v-board-50th-anniversary/race-and-voting.html> [<https://perma.cc/TW7G-JF78>] (stating voting discrimination towards the Black population resulted in their communities to have little to no power in laws, taxes, and control over legal and educational institutions); see also *The Southern “Black Codes” of 1865-66*, CONST. RTS. FOUND., <https://www.crf-usa.org/brown-v-board-50th-anniversary/southern-black-codes.html> [<https://perma.cc/C9S7-9NPT>] (showcasing that during the Reconstruction era, Black men were given rights to vote. Despite the efforts of individuals to grant rights to Black individuals, Southern states tried to restrict voting of Black people. “By 1910, all Southern states had excluded [Black individuals] from voting.”)

355. See *Race and Voting*, *supra* note 354 (explaining the lower in percentage of registered Black voters was due to “intimidation, violence, and racial discrimination in state voting laws.” In Mississippi, during the Reconstruction era, over 90% of Black men were registered to vote, yet by 1892 only 6% of Black men were registered to vote.)

356. See Solomon et al., *supra* note 103 (explaining that Oregon “explicitly disenfranchised Black and Asian individuals prior to the Civil War, yet even after the after way, Oregon rejected the 15th Amendment and continued to “deny suffrage” to most individuals of color until 1959).

357. See *Block the Vote: How Politicians are Trying to Block Voters from the Ballot Box*, ACLU (Aug. 17, 2021), <https://www.aclu.org/news/civil-liberties/block-the-vote-voter-suppression-in-2020/> [<https://perma.cc/F2RD-BXQU>] (“Suppression efforts range from the seemingly unobstructive, like strict voter ID laws and cuts to early voting, to mass purges of voter rolls and systemic disenfranchisement. These measures disproportionately impact people of color, students, the elderly, and people with disabilities. And long before election cycles even begin, legislators redraw district lines that determine the weight of your vote.”); see also Sean Morales-Doyle, *The Supreme Court Clearly Won’t Protect Voting Rights. But Congress Can.*, BRENNAN CTR. FOR JUST. (July 7, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/supreme-court-clearly-wont-protect-voting-rights-congress-can> [<https://perma.cc/BF89-73AJ>] (highlighting various cases that have ruled in favor of voter suppression, including *Brnovich v. Democratic National Committee* which made it difficult to challenge discriminatory voting laws in the courts, and in *Shelby County v. Holder*, which upheld the requirement of voter ID’s in Indiana. “Federal courts have for decades played a vital role in protect-ing voting rights for all

Disenfranchisement laws prevent one in sixteen Black Americans from voting.³⁵⁸ Even today, mandated voting ID laws hurt Black people: 25% of Black Americans compared to 8% of white Americans do not have a current government-issued photo ID.³⁵⁹ In 2011 alone, more than thirty states introduced new voter suppression legislation, and nineteen of the bills passed.³⁶⁰ In 2013, the U.S. Supreme Court struck down part of the Voting

Amer-ic-ans. But instead of serving as a bulwark against efforts by politi-cians to target disfavored voters, the court, led by Chief Justice John G. Roberts Jr., has in recent years stead-ily under-cut voting rights.”).

358. See *Block the Vote: How Politicians are Trying to Block Voters from the Ballot Box*, *supra* note 357 (listing statistics of how groups are disproportionately impacted by voter suppression laws. Voter suppression laws negatively impact people of color, such as Black Americans, various age groups, mainly the younger and elderly individuals, and people with disabilities).

359. See *Oppose Voter ID Legislation - Fact Sheet*, ACLU (May 2017), <https://www.aclu.org/other/oppose-voter-id-legislation-fact-sheet> [<https://perma.cc/T5ED-RXPX>] (explaining how “Voter ID laws deprive many voters of their right to vote, reduce participation, and stand in direct opposition to our country’s trend of including more Americans in the democratic process. Many Americans do not have one of the forms of identification states acceptable for voting. These voters are disproportionately low-income, racial and ethnic minorities, the elderly, and people with disabilities. Such voters more frequently have difficulty obtaining ID[] because they cannot afford or cannot obtain the underlying documents that are a prerequisite to obtaining government-issued photo ID card.”). See generally Forrest Wickman, *Why Do Many Minorities Lack ID?*, SLATE (Aug. 21, 2012, 6:40 PM), <https://slate.com/news-and-politics/2012/08/voter-id-laws-why-do-minorities-lack-id-to-show-at-the-polls.html> [<https://perma.cc/27V8-4KJF>] (reporting the reasons why minorities lack ID’s. One reason includes that minorities are less likely to need them, especially when they live in urban areas, because they cannot afford cars, so they often use busses and subways for transportation. Minorities are also likely to have their license suspended or revoked due to failure to pay outstanding fines. Minorities also have difficulty obtaining necessary documents in order to get an ID, such as a birth certificate and a social security card, especially since it takes time and money.).

360. See generally Wendy R. Weiser & Nhu-Y Ngo, *Voting Rights in 2011: A Legislative Round-Up*, BRENNAN CTR. FOR JUST. (July 15, 2011), <https://www.brennancenter.org/our-work/research-reports/voting-rights-2011-legislative-round-up> [<https://perma.cc/NB8U-RLAQ>] (detailing the various voting suppression laws introduced by the states. At least thirty-four states introduced photo ID requirements for voting, at least ten states introduced legislation that would require proof of citizenship in order to register to vote, at least six states introduced legislation to regulate voter registration drives, at least nine states introduced legislation to reduce early voting periods, and at least three states introduced legislation to reduce voter registration on election day); Michael Cooper, *New State Rules Raising Hurdles at Voting Booth*, N.Y. TIMES (Oct. 2, 2011), <https://www.nytimes.com/2011/10/03/us/new-state-laws-are-limiting-access-for-voters.html> [<https://perma.cc/2JBV-NQPW>] (reporting at least nineteen states have passed voter restriction laws making it more difficult for more than five million voters to cast ballots).

Rights Act, opening the door for states with a history of voter suppression to manipulate voting procedures.³⁶¹

K. The Lasting Harmful Effects Derived From Inadequate Healthcare

Throughout U.S. history, Black Americans received unequal access to quality healthcare, resulting in health-related risks and stressors that go beyond individual behaviors or genetic issues.³⁶² These “social determinants of health” create adverse health outcomes among Black Americans which are worse than those of any other racial or ethnic group.³⁶³ Between 2010 and 2018, Black Americans were 1.5 times more likely to be uninsured than

361. See *Shelby Cnty. v. Holder*, 570 U.S. 529, 534, 557 (2013) (holding the Voting Rights Act of 1965 to be unconstitutional because the passage of the act reflected antiquated data. Congress is allowed to have a coverage formula to address voting discriminatory practices, but it must reflect “current conditions.” The Court stated while the Act addressed an important issue, restricting certain states to pass laws related to voting by obtaining federal permission based on older data is unconstitutional.); see also Emilye Crosby & Judy Richardson, *Voting Rights Act: Beyond the Headlines*, CIV. RTS. TEACHING, <https://www.civilrightsteaching.org/voting-rights/voting-rights-act-beyond-headlines> [<https://perma.cc/26YK-NK6D>] (contending the Voting Rights Act should be extended, as opposed to being ruled as unconstitutional, because of the efforts it made to ensure there were no voting discriminatory practices against Black Americans).

362. See, e.g., David R. Williams & Michelle Sternthal, *Understanding Racial-ethnic Disparities in Health: Sociological Contributions*, 51 J. HEALTH & SOC. BEHAV. S15, S16, S20 (2010) (Black individuals have been outlived by white individuals by more than six years. Racial disparities in health negatively impact Black individuals which has stemmed from segregation. It has limited education, enforced “concentrated poverty and social disorder” making it difficult for individuals to eat healthy and exercise regularly, consistent exposure to poverty has elevated stress levels, and exposed communities to environmental toxins).

363. See CDC, SOCIAL DETERMINANTS OF HEALTH, <https://minorityhealth.hhs.gov/Assets/pdf/Checked/1/CamaraJones.pdf> [<https://perma.cc/5AKG-6HSX>] (describing social determinants of health and illness as factors outside of an individual’s genetic predispositions and individual behaviors, such as individual resources [ex. occupation, income, etc.], neighborhood resources [ex. housing, food choices, transportation, etc.], and hazards and toxic exposures [ex. exposure to pesticides and lead]. Addressing social determinants of health would lessen disparities between racial groups and “achieve large and sustained improvements in health outcomes.”); see also W. Michael Byrd & Linda A. Clayton, *Race, Medicine, and Health Care in the United States: A Historical Survey*, 93 J. NAT’L MED. ASS’N 11S, 24S–25S (2001) (“While the conceptualization of race moved from the biological to sociological sphere over time, racism continues to be a factor producing adverse outcomes for African American and other ethnic minorities, as demonstrated. Race and class-based structuring of the U.S. health delivery system has combined with other factors, including physician’s attitudes—perhaps legacies conditioned by their participation in slavery and creation of scientific myth of [B]lack biological and intellectual inferiority — to create a medical-social, health system cultural, and health delivery environment which contributes to the propagation of racial health disparities, and ultimately, the health system’s race and class dilemma.”).

white Americans, even with the passing of the Affordable Care Act and the increased coverage gains made by many groups of color.³⁶⁴ Typically, health care workers provide lower-quality care in Black and Hispanic neighborhoods.³⁶⁵

Even with comparable “insurance status, income, age, and severity of conditions,” Black Americans receive lower-quality health care than their white counterparts.³⁶⁶ Chronic exposure to structural racism and unfair treatment links to higher morbidity and mortality rates in Black Americans.³⁶⁷ The stress of living with structural racism can lead to increased disease and premature death.³⁶⁸

Discrimination is one of the social determinants of health, and has put people of color at higher risk for infectious diseases such as COVID-19 or other serious illnesses, including Type 2 diabetes, stroke, cancer, and kidney disease.³⁶⁹ The life

364. See Nambi Ndugga & Samantha Artiga, *Disparities in Health and Health Care: 5 Key Questions and Answers*, KFF (May 11, 2021), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/disparities-in-health-and-health-care-five-key-questions-and-answers/> [<https://perma.cc/PV2H-M86S>] (highlighting that while the Affordable Care Act provided major coverage gains across various racial and ethnic groups, especially those that have faced healthcare disparities, Black and Hispanic individuals were still uninsured in comparison to white individuals).

365. See Jamila Taylor, *Racism, Inequality, and Health Care for African Americans*, CENTURY FOUND. (Dec. 19, 2019), <https://tcf.org/content/report/racism-inequality-health-care-african-americans/?session=1> [<https://perma.cc/G2EY-4MUS>] (attributing the lower-quality health care to minority communities on the lack of hospitals and health care providers caused by residential segregation).

366. Khiara M. Bridges, *Implicit Bias and Racial Disparities in Health Care*, ABA, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-state-of-healthcare-in-the-united-states/racial-disparities-in-health-care/ [<https://perma.cc/ER4K-F63E>] (quoting a report from the National Academy of Medication from 2005).

367. See Niran S. Al-Agba, *How Structural Racism Affects Healthcare*, MEDPAGE TODAY (Jan. 14, 2020), <https://www.medpagetoday.com/blogs/kevinmd/84362> [<https://perma.cc/N5S6-3UTT>] (reasoning that a lifetime of “repetitive discriminatory behaviors can exact a heavy toll” on vulnerable minority groups. This “heavy toll” can be seen through stress effecting biological events in the body).

368. See *id.* (explaining how structural racism in “housing, education, employment, healthcare, and criminal justice” triggers negative biological responses that may worsen long-term health outcomes).

369. See *Health Equity Considerations and Racial and Ethnic Minority Groups*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html> [<https://perma.cc/UF3K-LSYJ>] (last updated Jan. 25, 2022) (explaining the discrimination faced by racial and ethnic minority groups in systems designed to protect and promote well-being and health, leads to “chronic and toxic stress” increasing risk for contracting COVID-19); see also William C. Cockerham et al., *The Social Determinants of Chronic Disease*, 52 AM. J. PREVENTIVE MED. 55

expectancy for Black Americans is six years less than it is for white Americans.³⁷⁰ Black Americans are seventy-five percent more likely to reside in areas near facilities that produce hazardous waste, resulting in greater exposure to pollution and unhealthy environments compared to other Americans.³⁷¹ Black people are “exposed to 1.5 times more sooty pollution” than others—regardless of income level.³⁷² In historically redlined neighborhoods, temperatures average five degrees hotter than non-redlined neighborhoods where investments in green spaces and trees are made—at times reaching a twenty-degree difference in summer surface temperatures.³⁷³

The United States has a higher maternal mortality rate compared to other affluent countries, and the disproportionate number of Black mothers dying is one of the drivers.³⁷⁴ Maternal and infant mortality for Black Americans are far higher than for

(2017) (concluding social determinants effect a person’s “risk of exposure, degree of susceptibility, and the course and outcome of [infectious or chronic] disease[s]”).

370. See Al-Agba, *supra* note 367 (explaining that the disparity between the health of Black Americans and white Americans was most likely caused by the structural racism and unfair treatment faced by Black Americans. This disparity is evidence by the lower lifespan and higher risk of developing chronic illnesses, infections, and injuries seen in Black Americans compared to white Americans).

371. See Linda Villarosa, *Pollution Is Killing Black Americans. This Community Fought Back.*, N.Y. TIMES (July 28, 2020), <https://www.nytimes.com/2020/07/28/magazine/pollution-philadelphia-black-americans.html> [<https://perma.cc/UN6T-JYMH>] (explaining Black Americans living within these “fence-line communities” bear a disproportionate burden and hardship of the pollution crisis in this nation, often seen in the form of chronic illness or death).

372. *Id.*

373. See Daniel Cusick, *Past Racist “Redlining” Practices Increased Climate Burden on Minority Neighborhoods*, SCI. AM. (Jan. 21, 2020), <https://www.scientificamerican.com/article/past-racist-redlining-practices-increased-climate-burden-on-minority-neighborhoods/> [<https://perma.cc/WXB4-5D7J>] (asserting the historical “redlining” of neighborhoods, concentrating minorities within specific districts, has resulted in minority and lower-income households to reside in “urban heat islands.” These heat islands contain less green space and vegetation which are shown to help regulate temperatures. The result is a “substantially higher risk of heatstroke and other heat-related illnesses.”)

374. See Nina Martin & Renee Montagne, *Black Mothers Keep Dying After Giving Birth. Shalon Irving’s Story Explains Why*, NPR (Dec. 7, 2017, 7:51 PM), <https://www.npr.org/2017/12/07/568948782/black-mothers-keep-dying-after-giving-birth-shalon-irvings-story-explains-why> [<https://perma.cc/KXB5-74BV>] (comparing Black Americans and Black Mothers’ death rate to that of women in less-affluent countries like Mexico and Uzbekistan).

white Americans.³⁷⁵ Research has found that maternal stress brought on by cumulative experiences of racism and sexism is a factor in low birth weight—a leading cause of infant mortality.³⁷⁶ Black mothers die at “three to four times the rate of non-Hispanic white mothers,” while infants of Black mothers die at twice the rate of non-Hispanic white infants.³⁷⁷

Although Black women are 22% more likely than white women to die from heart disease, they are 243% more likely to die from maternity-related causes.³⁷⁸ Socioeconomic advantages are hardly advantageous: a study in New York found that college - educated Black mothers were “more likely to suffer severe complications of pregnancy or childbirth” than white women without a high school education.³⁷⁹

L. The Lasting Harmful Effects Derived From The Criminal Justice System

Well, if one really wishes to know how justice is administered in a country, one does not question the policemen, the lawyers, the judges, or the protected members of the middle class. One goes to the unprotected — those, precisely, who need the law's protection most!—and listens to their testimony. Ask any Mexican, any Puerto Rican, any Black man, any poor person—ask the wretched how they fare in the halls of justice, and then you will know, not whether or not the country is just, but whether or not it has any love for justice, or any concept of it. It is certain, in any case, that

375. See *id.* (reporting, “[B]lack mothers in the U.S. die at three to four times the rate of white mothers” and “black infants are twice as likely as white babies to die before their first birthday”).

376. See Esther Gross et al., *Racism and Sexism Against Black Women May Contribute to High Rates of Black Infant Mortality*, CHILD TRENDS (Apr. 18, 2019), <https://www.childtrends.org/blog/racism-sexism-against-black-women-may-contribute-high-rates-black-infant-mortality> [<https://perma.cc/933D-MUVK>] (explaining, “[c]hronic stress produces hormones that damage the body over time.” The damage from the hormones is called allostatic load and can be measured and scored using health data. Black women average the highest allostatic load scores at all income levels.).

377. Cristina Novoa & Jamila Taylor, *Exploring African Americans' High Maternal and Infant Death Rates*, CTR. FOR AM. PROGRESS (Feb. 1, 2018), <https://www.americanprogress.org/issues/early-childhood/reports/2018/02/01/445576/exploring-african-americans-high-maternal-infant-death-rates/> [<https://perma.cc/E3MB-JZ7X>].

378. See Martin & Montagne, *supra* note 374 (“[A] black woman is 22 percent more likely to die from heart disease than a white woman, 71 percent more likely to perish from cervical cancer, but 243 percent more likely to die from pregnancy- or childbirth-related causes.”).

379. *Id.*

ignorance, allied with power, is the most ferocious enemy justice can have.³⁸⁰

One needs to look no further than the stark differences within the criminal justice system between Black Americans and other races to see the most damaging consequences of slavery.³⁸¹ Presumptions of guilt based on poverty and racial bias created a system rife with error.³⁸² What may appear to be a link between race and crime is largely “a function of concentrated urban poverty, which is far more common for African Americans than for other racial groups.”³⁸³ The criminal justice system in the United States is not only the largest in the world, but also the largest in the world in rate of incarceration, “dwarfing the rate of nearly every other nation.”³⁸⁴ Laws were created “that make nonviolent offenses—like writing a bad check or committing a petty theft—result in life

380. JAMES BALDWIN, *NO NAME IN THE STREET* 149 (1st Vintage Int'l ed. 2007).

381. *See generally* SENT'G PROJECT, REPORT OF THE SENTENCING PROJECT TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA, AND RELATED INTOLERANCE, 1 (2018), <https://www.sentencingproject.org/wp-content/uploads/2018/04/UN-Report-on-Racial-Disparities.pdf> [<https://perma.cc/Z5B6-TKDF>] (providing statistics that reveal the racial disparity in the U.S. criminal justice system for African Americans in particular. For example, Black Americans are more likely to be arrested, convicted, and sentenced to likely prison terms compared to white and even Hispanic Americans.).

382. *See generally Presumption of Guilt*, EQUAL JUST. INITIATIVE, <https://eji.org/issues/presumption-of-guilt/> [<https://perma.cc/RHW3-9SWS>] (citing the belief of a “racial hierarchy” labeling Black individuals as inferior as the justification for slavery. Explaining that this belief guided the transition from slavery into the overcriminalization of Black Americans for convict leasing. The present effects of this overcriminalization of Black Americans can be seen in the implicit association of Black Americans and people of color with criminality. The result is disproportionately higher rates of police stops, searches, and a higher likelihood of incarceration); KAREN DOLAN & JODI L. CARR, *THE POOR GET PRISON: THE ALARMING SPREAD OF THE CRIMINALIZATION OF POVERTY* 6–8, 27–31 (2015) (discussing several areas of the law where poverty and its effects are criminalized or act as obstacles to seek public assistance. Additionally stating that poor people of color “face a far greater risk of being fined, arrested, and even incarcerated for minor offenses than other Americans.”).

383. SENT'G PROJECT, *supra* note 381, at 2 (categorizing the issues and facts that are often used to hide the racial disparity and lies within the US criminal justice system, negatively affecting African Americans disproportionately).

384. *Id.* at 1 (categorizing the issues and facts which are often used to hide the racial disparity that lies within the US criminal justice system, negatively affecting African Americans disproportionately. “At yearend 2015, over 6.7 million individuals[] were under some form of correctional control in the United States, including 2.2 million incarcerated in federal, state, or local prisons and jails.[]”).

imprisonment.”³⁸⁵ One in five people in state prison have a substance abuse problem, with nearly half a million people incarcerated in state or federal prisons for drug-related offenses.³⁸⁶ Mass incarceration affects the world outside of prison; laws “ban poor people and their children from receiving food stamps and public housing if they have prior drug convictions[,]often leaving them homeless and unemployable.”³⁸⁷ Black Americans are more likely than white Americans to be arrested.³⁸⁸ Once arrested, Black Americans are more likely to be convicted and experience lengthy prison sentences.³⁸⁹ African American adults are nearly six times as likely to be incarcerated than whites.³⁹⁰ One in every three Black boys born in 2001 are likely to go to prison in their lifetime, but only one in

385. BRYAN STEVENSON, *JUST MERCY: A TRUE STORY OF THE FIGHT FOR JUSTICE* 15 (2018).

386. See MARC MAUER & RYAN S. KING, *A 25-YEAR QUAGMIRE: THE WAR ON DRUGS AND ITS IMPACT ON AMERICAN SOCIETY* 2, 10–15 (2007) <https://www.sentencingproject.org/wp-content/uploads/2016/01/A-25-Year-Quagmire-The-War-On-Drugs-and-Its-Impact-on-American-Society.pdf> [<https://perma.cc/FTR7-RVLU>] (“African Americans serve almost as much time in federal prison for a drug offense (58.7 months) as whites do for a violent offense (61.7 months), largely due to racially disparate sentencing laws such as the 100-to-1 crack-powder cocaine disparity[.]”).

387. BRYAN STEVENSON, *supra* note 385.

388. See Anagha Srikanth, *Black People 5 Times More Likely to Be Arrested than Whites, According to New Analysis*, HILL (June 11, 2020), <https://thehill.com/changing-america/respect/equality/502277-black-people-5-times-more-likely-to-be-arrested-than-whites/> [<https://perma.cc/PD4Q-W6KW>] (highlighting Black individuals are eight to ten times more likely to be arrested compared to white individuals due to the over-policing of the Black community). See generally SAMUEL R. GROSS ET AL., *RACE AND WRONGFUL CONVICTIONS IN THE UNITED STATES*, 2 (2017), http://www.law.umich.edu/special/exoneration/Documents/Race_and_Wrongful_Convictions.pdf [<https://perma.cc/QV4T-NZMS>] (comparing the similarities in the underlying reasons for higher arrests and exonerations among Black individuals when compared to white individuals. There is no one explanation for the heavy concentration of Black defendants among those convicted of crimes they did not commit. They differ sharply from one type of crime to another. The causes run from the inevitable consequences of patterns in crime and punishment, racial bias ranging from unconscious bias to deliberate acts of racism, and from the police who have essentially unlimited discretion to choose how and where to enforce drug laws, and against whom, which opens the door to pervasive discrimination).

389. See SENT’G PROJECT, *supra* note 381, at 8 (categorizing the issues and facts which are often used to hide the racial disparity that lies within the US criminal justice system, negatively affecting African Americans disproportionately).

390. See *id.* at 6–7 (recognizing that Black individuals are nearly six times as likely than white individuals to get incarcerated, and that this rate is higher in some states. This disparity may be attributed to policing, pre-trial factors, discretionary decisions, and sentencing policies that negatively impact people of color according to their race and class status.).

seventeen are likely to go to prison for white boys.³⁹¹ “In 2016, [B]lack Americans comprised 27% of all individuals arrested in the United States[, which is] double their share of the total population.”³⁹² Black youth are also disproportionately arrested because they only make up fifteen percent of children in the United States yet comprise thirty-five percent of juveniles arrests.³⁹³ While crime is considered to be committed by Black individuals at a higher rate than other races, white individuals overestimate the proportion of crimes committed by people of color by not considering the “prevalence of bias in the criminal justice system.”³⁹⁴ The disproportionality affects not just the convicted but the wrongly convicted as well.³⁹⁵ According to the University of California Irvine’s National Registry of Exonerations, there were over 3,800 exonerations for innocent defendants or defendants that group exonerations cleared.³⁹⁶ The problem of wrongful charges and incarcerations affects African-Americans more than any other group,

391. *See id.* at 1 (“Absent meaningful efforts to address societal segregation and disproportionate levels of poverty, U.S. criminal justice policies have cast a dragnet targeting African Americans. The War on Drugs as well as policing policies including ‘Broken Windows’ and ‘Stop, Question, and Frisk’ sanction higher levels of police contact with African Americans. This includes higher levels of police contact with innocent people and higher levels of arrests for drug crimes.”).

392. *Id.* at 2 (categorizing the issues and facts which are often used to hide the racial disparity within the US criminal justice system, negatively affecting African Americans disproportionately. To be clear, these numbers reflect who is being convicted and incarcerated, not who is necessarily committing crimes).

393. *See id.* (acknowledging while juvenile arrests have decreased overall, the racial gap between Black youth and white youth have increased in which Black youth are getting confined in juvenile centers more than their white counterparts).

394. *Id.* at 2–3 (contending an increase of criminality by Black Americans is due to their high connection with urban poverty. This relationship can increase the possibility “of committing certain violent and property crimes.”)

395. *See generally id.* at 3 (stating that the criminal justice systems tends to “cast a dragnet targeting African Americans.” This means that there is higher contact between police and Black Americans, which means there are higher chances of arrests to be made in the Black community due to this racial targeting).

396. SAMUEL R. GROSS ET AL., *supra* note 388, at 1 (summarizing in detail the wide racial disparity of innocent defendants wrongfully convicted of crimes and were later exonerated. This report focuses on three types of crime that produce the largest number of exonerations – murder, sexual assault, and drug crimes. The report examines the causes of the disparity while showing in stark numbers just how skewed the criminal justice system affects African Americans. The report goes further and examines the causal factors for the disparity, concluding that historic discrimination in housing, poor educational opportunities, and segregation were significant causal factors.)

according to the Registry.³⁹⁷ Nearly half of the 1,994 people exonerated since 1989 were African American.³⁹⁸ It even takes longer for African Americans to clear their names: African-Americans are more likely to be wrongfully convicted of murder and spend an average of three more years in prison before being released compared to white individuals.³⁹⁹ Throughout U.S. history, the justice system was used to watch, control, detain, exploit and, in too many cases, kill Black people.⁴⁰⁰ Mass surveillance of Black Americans began in the eighteenth century and continues today.⁴⁰¹ Throughout our

397. *See id.* (summarizing in detail the wide racial disparity of innocent defendants wrongfully convicted of crimes and were later exonerated. This report focuses on three types of crime that produce the largest number of exonerations – murder, sexual assault, and drug crimes. The report examines the causes of the disparity while showing in stark numbers just how skewed the criminal justice system affects African Americans. The report goes further and examines the causal factors for the disparity, concluding that historic discrimination in housing, poor educational opportunities, and segregation were significant causal factors.)

398. *See id.* (reporting that 47% of African-Americans were exonerated of the 1,900 defendants eventually found innocent, and a great majority of an additional 1,900 defendants cleared in group exonerations were also African-Americans).

399. *See also* Niraj Chokshi, *Black People More Likely to Be Wrongfully Convicted of Murder, Study Shows*, N.Y. TIMES (Mar. 7, 2017), <https://www.nytimes.com/2017/03/07/us/wrongful-convictions-race-exoneration.html> [<https://perma.cc/K5GE-HR2U>] (reporting that when it comes to the most serious crimes, racial bias is often a factor which undermines the fairness of the criminal justice system, in particular affecting African Americans.)

400. *See generally* ELIZABETH KAI HINTON ET AL., AN UNJUST BURDEN: THE DISPARATE TREATMENT OF BLACK AMERICANS IN THE CRIMINAL JUSTICE SYSTEM 2 (2018), <https://www.vera.org/publications/for-the-record-unjust-burden> [<https://perma.cc/KDA6-C4EE>] (“Racial disparities in the criminal justice system have deep roots in American history and penal policy. In the South, following Emancipation, [B]lack Americans were specific targets of unique forms of policing, sentencing, and confinement. Laws that capitalized on a loophole in the [Thirteenth] Amendment that states citizens cannot be enslaved unless convicted of a crime intentionally targeted newly emancipated black people as a means of surveilling them and exploiting their labor.” The brief further highlights that when an individual who is Black is accused for a capital case, they are twice as likely to receive a death sentence when the victim is a white individual.); Daniele Selby, *8 Facts You Should Know About Racial Injustice in the Criminal Legal System*, INNOCENCE PROJECT (Feb. 5, 2021), <https://innocenceproject.org/facts-racial-discrimination-justice-system-wrongful-conviction-black-history-month/> [<https://perma.cc/MFY4-WABX>] (listing facts of how the justice system has negatively impacted Black individuals. While 53% of Black individuals have been exonerated from the 185 people sent to death row, the death penalty has always been disproportionately applied to Black-Americans. In 2017, forty-nine out of 149 unarmed individuals that were killed by police were Black individuals).

401. *See* Chelsea Hansen, *Slave Patrols: An Early Form of American Policing*, NAT'L. L. ENF'T. MEMORIAL MUSEUM, <https://nleomf.org/slave-patrols-an-early-form-of-american-policing/> [<https://perma.cc/RPP8-3NLV>] (listing three functions of slave patrols: “(1) to chase down, apprehend, and return to their owners, runaway slaves; (2) to provide a form of organized

history, policing the ability of Black Americans to move around freely was a method of instilling fear and asserting white dominance.⁴⁰² Much of today's law enforcement practices grew from methods first began when the states were still English colonies; after the Civil War, especially in the South, these police agencies often continued the function of the slave patrols.⁴⁰³ The Fugitive Slave Acts of 1793 and 1850 mandated that citizens aid and assist in returning escaped slaves or face harsh penalties.⁴⁰⁴ Slave patrols made up of white community members beat, terrorized, and kept enslaved Americans under surveillance at the directive of local authorities.⁴⁰⁵ After the Civil War, vigilante groups operating outside of the law continued the tactics of the

terror to deter slave revolts; and (3) to maintain a form of discipline for slave-workers who were subject to summary justice, outside the law." American policing originated as slave patrols because in the south there was fear about slave rebellions, which would negatively impact the economy that was dependent on slave labor. Due to this fear, slave patrolling was the one of first forms of policing in the United States.)

402. *See generally id.* (asserting the violent treatment of African-Americans was legalized by slave patrols. Slave patrols had to "control the movements and behaviors of enslaved populations." In order for this to be accomplished, according to the slave patrols, they would physically and psychologically violate enslaved African-Americans through beatings, breaking-up families, and depriving them of food.)

403. *See id.* (demonstrating the history of slave patrols and how over time it is still perpetuated in modern day law enforcement).

404. Fugitive Slave Act of 1793, ch. 7, § 4, 1 Stat. 302, 305 ("[A]ny person who shall knowingly and willingly obstruct or hinder such claimant . . . in so seizing or arresting such fugitive from labour, or shall rescue such fugitive from such claimant, . . . or shall harbor or conceal such person after notice that he or she was a fugitive from labour, . . . shall, for either of the said offenses, forfeit and pay the sum of five hundred dollars."); Fugitive Slave Act of 1850, ch. 60, § 7, 9 Stat. 462, 464 (codifying any individual who hinders the arrest of a fugitive is subject to "a fine not exceeding one thousand dollars" and being imprisoned "not exceeding six months."); *see* James C. Cobb, *One of American History's Worst Laws Was Passed 165 Years Ago*, TIME (Sept. 18, 2015, 10:30 AM), <https://time.com/4039140/fugitive-slave-act-165/> [<https://perma.cc/4Q53-6AQT>] (describing how the federal government enacted the Fugitive Slave Acts of 1793 and 1850 in the Constitution, which forced citizens, even those uninterested, to assist in capturing fugitive slaves. If individuals did not follow the Acts, then those individuals would be fined and imprisoned. This power vested into federal authority, taking away authority from northern courts, which "blatantly encouraged" the commissioners to find in favor of slaveowners.)

405. *See* Hansen, *supra* note 401 (stating being a patrolman was considered "a civic duty." Some patrollers would receive fines if they did not apprehend and beat African American fugitives. These patrollers were also compensated for executing violent force towards Black fugitive slaves.)

prewar slave patrols to control and terrorize Black Americans, including groups like the Ku Klux Klan.⁴⁰⁶

In 1968, the U.S. Supreme Court decision in *Terry v. Ohio* permitted police to stop and frisk a citizen based on a “reasonable suspicion” the individual had committed a crime, a change from the heightened standard of “probable cause.”⁴⁰⁷ For example, from 2004 to 2012, the New York Police Department briefly detained and usually physically searched 4.4 million people; 80% were Black or Latino, and in 98.5% of the searches, the subject was not carrying any weapon.⁴⁰⁸

The Thirteenth Amendment to the U.S. Constitution abolished slavery “except as a punishment for a crime.”⁴⁰⁹ The punishment clause justified “convict leasing” and other forms of prisoner labor that replicated slavery.⁴¹⁰ Southern states enacted “Black

406. *See id.* (highlighting despite the abolition of slavery, meaning patrollers lost their lawful status, the violent tactics used by slave patrols continued to be used by various groups during Reconstruction).

407. *Terry v. Ohio*, 392 U.S. 1, 10, 27–28 (1968) (analyzing the importance of using a lesser standard of “reasonable suspicion” to arrest an individual is based on the protection of police officers and others. An officer does not need to be certain that an individual is armed with a weapon, but they must have made reasonable inferences in order to make the arrest.).

408. *See* BARTON GELLMAN & SAM ADLER-BELL, *THE DISPARATE IMPACT OF SURVEILLANCE* 10 (2017), <https://production-tcf.imgix.net/app/uploads/2017/12/03151009/the-disparate-impact-of-surveillance.pdf> [<https://perma.cc/9MSG-TPMQ>] (highlighting poor communities of color are more likely to be stopped and frisked by the police than the white and wealthier communities. This is not because the white and wealthier communities are “too harsh to search” but because police officers perceive poor communities of color as “most crimogenic.”).

409. U.S. CONST. amend XIII, § 1

410. *See id.* (abolishing slavery and involuntary solitude except as punishment for a crime where an individual was convicted); *see also* Robert Longley, *The 13th Amendment: History and Impact*, THOUGHT CO., <https://www.thoughtco.com/thirteenth-amendment-4164032#:~:text=The%2013th%20Amendment%20abolished%20enslavement,ratified%20on%20December%206%2C%201865> [<https://perma.cc/DTK5-9ZEK>] (last updated Aug. 2, 2021) (describing how regardless of the abolishment of slavery, individuals convicted of a crime were still forced to work, but within a prison setting. Convict leasing was a racially discriminatory measure forcing many Black Americans “into involuntary labor for years). *See generally* Anderson v. Salant, 96 A. 425, 428, 432 (1916) (holding the state’s constitutional provision is similar to that of the Thirteenth amendment in which it “has the same effect”, even though there was no exception clause like the Thirteenth amendment. The court went through a lengthy process defining slavery and ultimately held: “[t]he word ‘slavery’ at that time was used both in our statutes and in common parlance to mean a very definite thing, namely, the institution of slavery. We see no reason to suppose it was used in the constitution in any other sense. The fact that prison labor existed, without question, contemporaneously with the adoption of the constitution is also strong evidence that the prohibition was not intended to include such labor. The long acquiescence in the legislative exercise of the power to let prison labor, beginning January, 1847, is also a strong argument in favor of the

Codes” to detain Black people, under which only Black people were arrested and prosecuted for minor offenses such as loitering, breaking curfew, vagrancy, carrying weapons, and not having proof of employment.⁴¹¹

As more and more Black people were incarcerated, states profited by leasing prisoners to private industries like railways and mining, where Black Americans were forced to do dangerous and deadly work for no pay.⁴¹² Today primarily Black prisoners, work in fields that were once part of a private slave plantation at the Louisiana State Penitentiary known as Angola.⁴¹³ White guards, known as “Freemen,” supervise the prisoners.⁴¹⁴

Since 1990, Department of Defense surplus programs increased many local police departments’ access to military-grade equipment.⁴¹⁵ To help eliminate military waste and support the “war on drugs,” the Department of Defense introduced programs that provided police departments free access to

validity of that power.” The exception clause of the Thirteenth Amendment allowed for state courts to justify their own constitutional provisions that was silent on exceptions to grant prisons the authority to utilize involuntary convict labor.).

411. *See* *Convict Leasing*, EQUAL JUST. INITIATIVE (Nov. 1, 2013), <https://eji.org/news/history-racial-injustice-convict-leasing> [https://perma.cc/FL4A-SYXK] (“Crafted to ensnare Black people and return them to chains, these laws were effective “Due to the Black Codes,” prisoners held more Black individuals than white individuals for the first time in history.).

412. *See id.* (outlining the history of convict leasing as it relates to the liberation of slaves and the social and economic factors which fomented “Black Codes” and the dilution of the Thirteenth Amendment’s purpose).

413. *See* Daniele Selby, *How the 13th Amendment Kept Slavery Alive: Perspectives from the Prison Where Slavery Never Ended*, INNOCENCE PROJECT (Sept. 17, 2021), <https://innocenceproject.org/13th-amendment-slavery-prison-labor-angola-louisiana/> [https://perma.cc/8N56-AUDX] (addressing how 75% of prisoners at Angola are Black and 70% of prisoners have life sentences, essentially placing them back into slavery).

414. *See* *Angola State Prison: A Short History*, KNIGHT CASE STUD. INITIATIVE COLUMBIA JOURNALISM SCH., https://cnmtl.columbia.edu/projects/caseconsortium/casestudies/54/casestudy/www/layout/case_id_54_id_547.html [https://perma.cc/QR3F-N9JQ] (illustrating the precarious conditions of the Angola State Prison closely resembling slavery).

415. *See* Barry Friedman & Jessica Gillooly, *Can the Militarization of the Police be Justified?*, AM. CONST. SOC’Y (Sept. 2, 2021), <https://www.acslaw.org/expertfexpe/can-the-militarization-of-the-police-be-justified/> [https://perma.cc/VH89-XH7S] (“The main culprit of police militarization has been understood to be the Department of Defense’s ‘1033 Program’—by which the federal government provides surplus military equipment to local policing agencies at little to no cost.”).

military-grade equipment.⁴¹⁶ The equipment included assault rifles, grenade launchers, battle uniforms, and armored vehicles.⁴¹⁷ Police departments receiving the military equipment experienced more police violence and deployed the equipment more often to communities of color—in particular, Black communities.⁴¹⁸

Police use of force is one of the leading causes of death for men of color aged 25 -29.⁴¹⁹ Research published in the Proceedings of the National Academy of Sciences of the United States of America in 2018 indicated that police would kill about one in 1,000 Black men, the highest lifetime risk for any racial or ethnic group included in their findings.⁴²⁰ Ninety-nine percent of killings by police from 2013 to 2019 have not resulted in charging officers with a crime.⁴²¹

416. *See id.* (“Congress reauthorized the NDAA in 1997 and formally established the 1033 Program—the name of the program reflects the section number (1033) of the 1997 Act. Under the reauthorization, policing agencies could acquire excess military property for a wider range of law enforcement purposes, including counterterrorism activities.”).

417. *See* Talib Visram, *Eliminating This Federal Program Would Play a Major Part in Demilitarizing the Police*, FAST CO. (June 8, 2020), <https://www.fastcompany.com/90513061/eliminating-this-federal-program-would-play-a-major-part-in-demilitarizing-the-police> [<https://perma.cc/BKH3-4BEX>] (demonstrating the full extent of militarizing the police, the transfers ramped up after the terrorists attacks of Sept. 11, 2001. “Between 2006 and 2014, law enforcement agencies amassed a collection of more than \$1.5 billion of military equipment, including: 79,288 assault rifles, 205 grenade launchers, 11,959 bayonets, 3972 combat knives, 422 helicopters, 479 bomb-detonator robots, more than 15,054 battle uniforms, and \$39 million worth of electric wire. The ACLU also found that 500 departments had Mine Resistant Ambush Protected (MRAP) vehicles, built to deflect landmines and roadside bombs in Iraq”).

418. *See id.* (noting the empirical studies which correlate violence with the militarization of the police resulting in the death of civilians, more specifically civilians of color).

419. *See* Frank Edwards et al., *Risk of Being Killed by Police Use of Force in the United States by Age, Race–Ethnicity, and Sex*, 116 PROC. NAT’L. ACAD. SCI. 16793 (2019) (noting that the average lifetime odds of being killed by police in general are about 1 in 2,000 for men and about 1 in 33,000 for women. The research paper’s authors focused exclusively on police use-of-force deaths and excluded cases from their analysis that police attributed to suicide, involving a vehicular collision, or that involved an accident such as an overdose or a fall. Black men are killed at significantly higher rate of 2.5 times more likely than white men).

420. *See id.* (“The average lifetime odds of being killed by police are about 1 in 2,000 for men and about 1 in 33,000 for women. Risk peaks between the ages of 20 y and 35 y for all groups. For young men of color, police use of force is among the leading causes of death.”).

421. *See* *Police Violence Map*, MAPPING POLICE VIOLENCE, <https://mappingpoliceviolence.org/> [<https://perma.cc/AAD9-9L8J>] (last updated Jan. 5, 2021) (highlighting the unsettling disparities in which Black people experience police violence including how Black people are 28% of those killed by police despite being only 13% of the population).

During police-initiated traffic and street stops, Black women are arrested three times more often than white women and are more likely to have force used against them.⁴²²

The prison population is disproportionately Black.⁴²³ Black adults are 5.9 times more likely to be incarcerated than white adults.⁴²⁴ Thirty-three percent of US prisoners are Black, compared to thirteen percent of the general population.⁴²⁵ White people make up thirty percent of the prison population and sixty-three percent of the general population.⁴²⁶ In 2017, Black women were nearly twice as likely to be incarcerated as white women.⁴²⁷ In 2020, 41.4% of prisoners on death row were Black, and 42.2% were white.⁴²⁸

Black youth are overrepresented in the juvenile justice system: fourteen percent of the general U.S. population under the age of eighteen is Black, but forty-two percent of boys in juvenile

422. See *Policing Women: Race and Gender Disparities in Police Stops, Searches, and Use of Force*, PRISON POL'Y INITIATIVE (May 14, 2019), <https://www.prisonpolicy.org/blog/2019/05/14/policingwomen/> [<https://perma.cc/E54R-VTDS>] (noting that in addition to the propensity of arrest, Black women face a higher likelihood of police interaction initiated by traffic and streets stops that lead to the aforementioned arrests).

423. See John Gramlich, *Black Imprisonment Rate in the U.S. Has Fallen by a Third Since 2006*, PEW RSCH. CTR. (May 6, 2020), <https://www.pewresearch.org/fact-tank/2020/05/06/share-of-black-white-hispanic-americans-in-prison-2018-vs-2006/> [<https://perma.cc/DWM5-6MX8>] (“Black men are especially likely to be imprisoned. There were 2,272 inmates per 100,000 Black men in 2018, compared with 1,018 inmates per 100,000 Hispanic men and 392 inmates per 100,000 white men.”).

424. See *Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System*, *supra* note 138 (attributing the disproportionate incarceration rates adversely impacting communities of color to a dual justice system that serves wealthy people more favorably than the Black community).

425. See Gramlich, *supra* note 423 (comparing Black Americans to their white counterparts, despite the decrease in the rate of imprisonment, Black individuals remain significantly more likely to be in prison).

426. See *id.* (providing research from 2018).

427. See *generally Incarcerated Women and Girls*, SENT'G PROJECT (Nov. 24, 2020), <https://www.sentencingproject.org/publications/incarcerated-women-and-girls/> [<https://perma.cc/G83Q-W3FF>] (showing that the female incarcerated population in the United States has exploded, increasing to over seven times what it was in 1980. Between 1980 and 2019, the number of incarcerated women increased by more than 700%, rising from a total of 26,378 in 1980 to 222,455 in 2019).

428. See *Racial Demographics*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/death-row/overview/demographics> [<https://perma.cc/66C8-BYVF>] (outlining the U.S. death row population by race in every state).

facilities are Black, as are thirty-five percent of girls.⁴²⁹ Bail bonds are set twice as high for Black defendants than for white defendants.⁴³⁰ Young Black men are 50% more likely than white defendants to be held in pretrial detention.⁴³¹

Ex-offenders face high unemployment and hiring bias after reentry because many employers are reluctant to hire job applicants with a criminal record; multiple studies have found they are even less likely to hire Black people with criminal records.⁴³² A study in New York City found that only ten percent of Black job applicants with a criminal record received a call back or job offer compared to twenty-two percent of white applicants with a criminal record and twenty-five percent of Black applicants without a criminal record—all of whom had identical resumes.⁴³³

Slavery existed in America from 1619, when the first African twenty-odd slaves were brought to Virginia, until the end of our Civil War in 1865.⁴³⁴ What followed was another 100 years of institutional violence and systemic racism codified into law and governmental policies in the

429. See Wendy Sawyer, *Youth Confinement: The Whole Pie 2019*, PRISON POL'Y INITIATIVE (Dec. 19, 2019), <https://www.prisonpolicy.org/reports/youth2019.html> [<https://perma.cc/D68S-DY7A>] (“Racial disparities are also evident in decisions to transfer youth from juvenile to adult court. In 2017, Black youth made up 35% of delinquency cases, but over half (54%) of youth judicially transferred from juvenile court to adult court. Meanwhile, white youth accounted for 44% of all delinquency cases, but made up only 31% of judicial transfers to adult court.”).

430. See Wendy Sawyer, *How Race Impacts Who is Detained Pretrial*, PRISON POL'Y INITIATIVE (Oct. 9, 2019), https://www.prisonpolicy.org/blog/2019/10/09/pretrial_race/ [<https://perma.cc/KJK9-KCLT>] (assessing the pretrial challenges that Black and brown defendants disproportionately face, including being more likely to be held in pretrial detention).

431. *Id.*

432. See Marilyn C. Moses, *How Likely Are Ex-Offenders to Get a Job Offer?*, 76 CORRECTIONS TODAY 15, 16 (2014) (“These studies provide empirical dimensions to the theory that discrimination against ex-offenders and those of color — particularly black men — exists.”).

433. See *id.* (“Pager repeated the experiment in New York City. Here, the four testers (two white males and two black males) applied for 250 low-wage positions. white men without a criminal record received a higher rate of callbacks (31 percent) than their black peers (25 percent). All applicants posing as ex-offenders were penalized. However, a white candidate’s chance of getting a callback was reduced by 30 percent, while a black applicant was penalized twice as much (60 percent) for having a criminal past. As in Milwaukee, a black nonoffender had about the same chance of receiving a job offer (25 percent) as a white ex-offender (22 percent).”).

434. See *Slavery in America, Jim Crow Museum Timeline, Part 2 (1619-1865)*, FERRIS STATE UNIV., <https://www.ferris.edu/HTMLS/news/jimcrow/timeline/slavery.htm> [<https://perma.cc/XX44-DQ86>] (portraying the history of slavery in the United States from its origins in 1619 when a group of Africans were likely seized from a Portuguese slave ship and carried to Jamestown, Virginia to be traded for provisions).

form of Jim Crow and legal segregation, Black Codes, redlining, lynching, Ku Klux Klan and other forms of public and private horror.⁴³⁵ In all, 350 years of institutional violence was committed against people who were brought here against their will and then sold as slaves for the purpose of building the American economy.⁴³⁶

III. SOLUTIONS

*“At the rate things are going here, all of Africa will be free before we can get a lousy cup of coffee.”*⁴³⁷

A. Reparations Are The Right Solution For The Legacy Of Slavery

Prior to the emancipation of slaves at the end of the Civil War, there were between 4 and 5 million enslaved persons in the American South.⁴³⁸ General Sherman’s promise of forty acres and a mule to former slaves would have provided a way to make a living, while integrating into life as a freed citizen.⁴³⁹ Among the few who truly received the acreage, most had it taken away.⁴⁴⁰ It took a hundred years after the end of the Civil War before the Civil Rights Act was passed in 1964 to dismantle segregation, and only in 1965 did the Voting Rights Act ensure equal access to Black people at the polls.⁴⁴¹ The issue of the economic gap that

435. See Nadra Kareem Nittle, *How the Black Codes Limited African American Progress After the Civil War*, HIST. (Oct. 1, 2020), <https://www.history.com/news/black-codes-reconstruction-slavery> [<https://perma.cc/949H-34NX>] (highlighting the black codes demanded African Americans work for free, while under surveillance).

436. See generally Coates, *supra* note 32 (describing historical background surrounding slavery, as well as the overall economic impact of slavery on America and the amount of time these injustices have gone on).

437. James Baldwin, *A Negro Assays the Negro Mood*, N.Y. TIMES, (Mar. 12, 1961) at 25.

438. See *Emancipation Proclamation*, HIST. (Jan. 26, 2020), <https://www.history.com/topics/american-civil-war/emancipation-proclamation> [<https://perma.cc/ERL6-A7K6>] (explaining the Emancipation Proclamation only applied to enslaved people in the Confederacy and not those that remained loyal to the Union).

439. See Henry Louis Gates, Jr., *The Truth Behind ‘40 Acres and a Mule’*, PBS, <https://www.pbs.org/wnet/african-americans-many-rivers-to-cross/history/the-truth-behind-40-acres-and-a-mule/> [<https://perma.cc/W2AR-AQTA>] (“[T]he visionary program, which would have fundamentally altered the course of American race relations.”).

440. See *id.* (emphasizing that Lincoln’s successor, Andrew Johnson, overturned the program and the land was returned to the original owners).

441. See *The Civil Rights Act of 1964 and the Voting Rights Act of 1965*, KHAN ACAD., <https://www.khanacademy.org/humanities/us-history/postwarera/civil-rights-movement/a/the-civil-rights-act-of-1964-and-the-voting-rights-act-of-1965> [<https://perma.cc/6Z3H-S29M>]

existed at the end of the Civil War was never addressed beyond Sherman's promise and the gap remains unclosed.⁴⁴²

The issue of reparations is not new; the idea that a people who have wronged another people should pay economic restitution for that wrong, is a civilized notion long considered reasonable.⁴⁴³ Black Americans are not looking for a handout but simply a "help up."⁴⁴⁴ The challenge of reparations is to find equitable solutions; a process which is complex, and implementation of any solution or solutions may prove even more difficult.⁴⁴⁵ However, these concerns should not stop the creation of a reparations plan.⁴⁴⁶ Shomari Willis writes:

Slavery reparations are restitution payments for slavery remitted to the descendants of enslaved people. In theory, American slavery reparations would be paid by entities that participated in slavery, such as the federal government, local governments, corporations, and universities. Since the Thirteenth Amendment to the Constitution was passed and ratified in 1865, ending legal slavery no sustained attempt has been made to right this

(highlighting the Civil Rights Act of 1965 barred discrimination and segregation in public facilities, education, jobs, and housing).

442. See Matt Stevens, *Reparations Are Part of Marianne Williamson's Plan to Heal America*, N.Y. TIMES (June 27, 2019), <https://www.nytimes.com/2019/06/27/us/politics/marianne-williamson-reparations.html> [<https://perma.cc/LX68-66NZ>] (emphasizing that several presidential candidates pushed for a plan for reparations for African Americans to close that economic gap which remains in the United States today).

443. See *id.* (showcasing how Germany has paid over \$89 Billion to Jewish organizations since the end of WW II and, while they do not erase the horror of the Holocaust, reparations have gone far towards establishing reconciliation between Germany and the Jews of Europe. Similarly, in 1988 Ronald Reagan signed the American Civil Liberties Act assigning between \$20,000 to \$22,000 to surviving prisoners of the Japanese internment camps during WW II).

444. See Michelle Singletary, *Yes, Black Americans Are Entitled to Reparations. We've Earned Them.*, WASH. POST (Oct. 30, 2020), <https://www.washingtonpost.com/business/2020/10/30/black-americans-reparations/> [<https://perma.cc/8FM9-49Y9>] ("It's important to point out that the concept of land distribution came from Black ministers who were advising Sherman on a remedy for the atrocities of slavery. They had the right idea, which was to work with the federal government to create a path to economic stability and self-sufficiency for Blacks.").

445. See Rashawn Ray & Andre M. Perry, *Why We Need Reparations for Black Americans*, POLICY 2020 BROOKINGS (Apr. 15, 2020), <https://www.brookings.edu/policy2020/bigideas/why-we-need-reparations-for-black-americans/> [<https://perma.cc/3E3P-HKEP>] (highlighting it is essential for current policies and the architecture of the economy to change to create an equitable solution and society).

446. See *id.* ("The United States had multiple opportunities to atone for slavery—each a missed chance to make the American Dream a reality—but has yet to undertake significant action.").

disparity, adding additional weight to the strong case that reparations would still be beneficial today.⁴⁴⁷

Deadria Farmer-Paellmann's legal appeals to the Seventh Circuit Court of Appeals and the U.S. Supreme Court proved unsuccessful, because the courts were absolutely correct, legally.⁴⁴⁸ Reparations are designed to compensate those who have suffered harm for the actions or inactions of the perpetrators.⁴⁴⁹ There is not a single African American alive who was emancipated from slavery by the Emancipation Proclamation.⁴⁵⁰ In fact, the reality is that it is nearly impossible to know which African Americans alive now have parents, or grandparents who were enslaved.⁴⁵¹ The last known slave ship that brought African slaves from Benin to the United States was the *Clotilde*, which docked illegally in Mobile, Alabama on July 17, 1860, and carried over 100 kidnapped men, women, and children.⁴⁵² Direct reparations for slavery to current African Americans is therefore the wrong answer and the wrong legal solution for the right question.⁴⁵³ The correct legal, ethical, and moral solution is to pay reparations for the *legacy* of slavery instead.⁴⁵⁴ Slavery's legacy has affected all Black Americans, regardless of whether their ancestors were enslaved because they suffered the same legalized

447. Wills, *supra* note 6.

448. See *This Isn't the First Time Reparations Have Come Up, Is It?*, ST. LOUIS POST-DISPATCH (Aug. 10, 2020), https://www.stltoday.com/this-isnt-the-first-time-reparations-have-come-up-is-it/article_9e68ce6f-9304-58f9-9840-d3fa49845b7b.html [https://perma.cc/9QPC-QMWF] (explaining the case failed because the statute of limitations and the plaintiffs did not have legal standing in the case).

449. See Ray & Perry, *supra* note 445 (emphasizing the Marshall Plan ensured Jews received reparations for the harm suffered during the Holocaust).

450. See Sean Coughlan, *Last Survivor of Transatlantic Slave Trade Discovered*, BBC (Mar. 25, 2020), <https://www.bbc.com/news/education-52010859> [https://perma.cc/39C8-FMQE] (noting that the last slave survivor abducted from Africa passed away in 1940).

451. See *id.* (highlighting an 83-year-old who was born when his enslaved father was 70 years old is still alive today); see also Sydney Trent, *At 88, He is a Historical Rarity—the Living Son of a Slave*, WASH. POST (July 27, 2020), <https://www.washingtonpost.com/history/2020/07/27/slave-son-racism-george-floyd/> [https://perma.cc/S5X4-38F4] (noting that it is not possible at this point to know how many living children remain of former slaves).

452. See Coard, *supra* note 17 (providing historical context on the last known slave ship to dock in America after the banning of slavery).

453. See Wills, *supra* note 6 (discrediting direct cash payments to the descendants of enslaved people).

454. See *id.* (emphasizing that slavery helped the United States become a strong economic power and that economic power is part of the legacy of slavery so it should be repaid or rectified).

discrimination and state-sanctioned brutality, murder, dispossession, and disenfranchisement which continued long after the Civil War ended.⁴⁵⁵ That history profoundly handicapped Black Americans' ability to create and accumulate wealth as well as to gain access to jobs, housing, education, and health care.⁴⁵⁶ Reparations as compensation for the legacy of slavery must therefore include all Black Americans.⁴⁵⁷

B. What Different Reparations Models Could Look Like

A good place to begin examining what reparations would look like is the "Commission to Study Reparation Proposals for African Americans Act."⁴⁵⁸ The bill was introduced to:

address the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the United States and the 13 American colonies between 1619 and 1865 and to establish a commission to study and consider a national apology and proposal for reparations for the institution of slavery, its subsequent de jure and de facto racial and economic discrimination against African-Americans, and the impact of these forces on living African-Americans, to make recommendations to the Congress on appropriate remedies, and for other purposes.⁴⁵⁹

Texas Democratic Representative, Sheila Jackson, picked up where Mr. Conyers left off, introducing the "Commission to Study and Develop Reparation Proposals for African-Americans Act," in January 2019.⁴⁶⁰ Leading up to the democratic primaries last year, one of the earliest candidates to declare, Marianne Williamson, was the only candidate to

455. *See id.* (highlighting slavery stripped enslaved people of their wages, property, civil rights, and freedom and how those injustices continued on well past the banning of slavery).

456. *See generally* Simms, *supra* note 67 (enumerating the various discrepancies between black households and white households and pointing to the systemic and structural racism that inevitably leads to lower access to education, housing and healthcare to name a few).

457. *See generally* Wills, *supra* note 6 (arguing that reparations by the federal government would offer restitution to the descendants of slaves, and even all Black Americans).

458. *See generally* Commission to Study Reparation Proposals for African Americans Act, H.R. 3745, 101st Cong. (1989) (examining the merits of introducing reparations to African Americans for United States slavery).

459. *Id.*

460. *See generally* Commission to Study and Develop Reparation Proposals for African Americans Act, H.R. 40 116th Cong. (2019) (analyzing slavery and discrimination in the colonies and the United States).

articulate a substantially fleshed out plan—which provided \$200 to \$500 billion.⁴⁶¹

Recently, institutions involved in slavery began reparations programs.⁴⁶² JP Morgan Chase acknowledged in 2005 that Citizen's Bank of Louisiana and New Orleans Canal & Banking Company—two of their predecessor banks—accepted enslaved persons as collateral; at one point even holding over 1200 enslaved persons when borrowers defaulted.⁴⁶³ Chase started a scholarship program for Black students in Louisiana as a form of reparations.⁴⁶⁴ Georgetown University, which once owned and sold 272 slaves, decided to pay reparations by offering scholarships to descendants of the people the school once enslaved and sold.⁴⁶⁵ Other entities—such as the city of Asheville, N.C., and the University of Virginia—apologized and took responsibility for their role in enslavement.⁴⁶⁶ Authors Hare and Criss state that “advocates for

461. See Marianne Williamson, *The Reparations Plan*, MARIANNE2020, <https://marianne2020.com/posts/the-reparations-plan> [<https://perma.cc/8L28-75Y7>] (expanding on her plan, she proposed her presidential administration would create a Reparations Council comprised of thirty to fifty members who were all descendants of slaves, and all who have some scholarly, cultural, or political connection to the issue of reparations. It would be up to this Council, not the American government, to determine how the money was to be disbursed. The only stipulation, on part of the American government, was that the money be applied for purposes of economic and educational renewal).

462. See Wills, *supra* note 6 (examining the movement against anti-Black racism that has made reparations an important element of the conversation on race relations).

463. See *id.* (describing the acknowledgement of JP Morgan regarding the history of their predecessor banks, which at one point accepted more than 13,000 enslaved persons as collateral for accounts and holding enslaved persons when borrowers defaulted).

464. See Robin Sidel, *A Historian's Quest Links J.P. Morgan To Slave Ownership*, WALL ST. J. (May 10, 2015, 12:01 AM), <https://www.wsj.com/articles/SB111568595843228824> [<https://perma.cc/X5BU-N86M>] (using the scholarship program to stand as an apology for the company's involvement in slavery); see also Ken Magill, *From J.P. Morgan Chase, an Apology and \$5 Million in Slavery Reparations*, N.Y. SUN (Feb. 1, 2005, 4:41 AM), <https://www.nysun.com/business/from-jp-morgan-chase-an-apology-and-5-million/8580/> [<https://perma.cc/PNW3-XTBA>] (“J.P. Morgan Chase & Company's recent apology for ties to slavery and a corresponding \$5 million scholarship program it set up for black students was a “step in the right direction for a tainted corporation,” but the nation's no. 2 bank has a long way to go before it has fully paid its debt to African Americans”).

465. See Wills, *supra* note 6 (discussing the history of reparations and the effect of slavery reparations today); see generally *About Us*, GU272 DESCENDANTS ASS'N, <https://www.gu272.net/about-us> [<https://perma.cc/9FSH-XSZZ>] (“In 1838, the Maryland Jesuits and Georgetown University sold more than 272 enslaved people from Jesuit-owned tobacco plantations in Southern Maryland to Henry Johnson and Jesse Batey – two plantation owners in southern Louisiana”).

466. See Clayton Henkel, *Asheville City Council Passes Resolution Apologizing for Slavery, Pledging Reparations*, THE PROGRESSIVE PULSE (July 15, 2020),

reparations say [] three different groups should pay for [reparations]: federal and state governments, which enshrined, supported and protected the institution of slavery; private businesses that financially benefited from it; and rich families that owe a good portion of their wealth to slavery.”⁴⁶⁷

C. How To Calculate How Much Is Owed

Hare and Criss reported “most formulations have produced numbers from as low as \$17 billion to as high as almost \$5 trillion.”⁴⁶⁸ A potential reparations program out link payouts to income and asset levels in order to take into account current wealth of individuals.⁴⁶⁹ Writing in the New York Times in 2019, journalist Patricia Cohen delved deeper, stating:

some economists evaluated labor’s share of the slave system’s profits in cotton and tobacco. Others have looked at what slaves would have earned if they had been paid wages plus interest, after subtracting housing and food costs. One study looked at 20th-century statistics, estimating how much less blacks earned because of decades of discrimination. Another examined the value of black wealth lost or destroyed after slavery ended, through practices like redlining that denied lending or insurance to African-American communities, or organized riots like the 1921 rampage

<http://pulse.ncpolicywatch.org/2020/07/15/asheville-city-council-passes-resolution-apologizing-for-slavery-pledging-reparations/#sthash.4Qx5Id1T.dpbs> [https://perma.cc/HD88-KSVN] (showing a historic move, the city of Asheville, North Carolina, voted unanimously to approve a reparations resolution for Black residents. Asheville, which is 83% white and 12% Black, also formally apologized for the role it played in slavery and implementing racist policies. The resolution, which passed in a 7-0 city council vote, does not mandate direct cash payments to descendants of slaves, or 40 acres and a mule. Instead, the city plans to make investments in areas where Black residents face disparities. The resolution calls for “forming policy and programs that will establish the creation of generational wealth and address reparations due in the Black community,” as well as asking the state legislature and federal government to do the same); see also *President’s Commission on Slavery and the University*, UNIV. OF VIRGINIA, <https://slavery.virginia.edu/> [https://perma.cc/PN75-MERB] (“The University of Virginia will join other premier institutions in exploring and commemorating its relationship with slavery”).

467. Hare & Criss, *supra* note 125.

468. *Id.*

469. See Patricia Cohen, *What Reparations for Slavery Might Look Like in 2019*, N.Y. TIMES (May 23, 2019), <https://www.nytimes.com/2019/05/23/business/economy/reparations-slavery.html> [https://perma.cc/4KCK-82T8] (showing that leading economists have tried to come up with a quantifiable basis for a fair sum over the past decades. The author cites economist David Swinton’s estimation of \$500 billion in 1983 dollars which he cites in “The Wealth of Races”, a collection of his writing written in 1990. He estimates that 40 to 60 percent of the difference between Black and white income should be attributed to past and continuing discrimination).

that leveled the Greenwood neighborhood of Tulsa, known as ‘Black Wall Street.’⁴⁷⁰

Perhaps a less controversial starting point that many economists use to begin their calculations is General Sherman’s promise of “40 acres and a mule.”⁴⁷¹ The starting date is known, but what is not known is exactly how much that would be worth today.⁴⁷² William Darity, a Duke University economist, begins with the cost of an acre in 1865 (about \$10).⁴⁷³ Cohen explains how Darity breaks down the estimated money owed:

Forty acres divided among a family of four comes to 10 acres per person, or about \$100 for each of the four million former slaves. Taking account of compounding interest and inflation, Mr. Darity has put the present value at \$2.6 trillion. Assuming roughly 30 million descendants of ex-slaves, he concluded it worked out to about \$80,000 a person. To get a sense of the scale, consider that the United States budget this year is \$4.7 trillion. Of course, varying any critical assumption can add or subtract billions or trillions of dollars.⁴⁷⁴

Cohen compares Darity’s methodology to Thomas Craemer’s, an associate professor of public policy at the University of Connecticut, who used the same 1865 starting point but a different methodology.⁴⁷⁵ Craemer used the current average price of agricultural land and estimated that forty acres of farmland and buildings would be valued around \$123,000.⁴⁷⁶ “If all of the four million slaves counted in the 1860 census had been able to take advantage of that offer, it would have totaled more than \$486 billion today—or about \$16,200 for each descendant of slaves.”⁴⁷⁷

470. *Id.*

471. *See id.* (promising newly freed slaves that every family would be given a plot of land measuring up to 40 acres).

472. *See id.* (emphasizing the difficulties determining what reparations for slavery would look like today).

473. *See id.* (describing William Darity and Kristen Mullen’s approach in their book on reparations).

474. *Id.*

475. *See id.* (writing in an academic paper for the Journal of Black Studies published in 2018, Professor Craemer compares German Holocaust reparations with reparations regarding slavery and the slave trade in the United States and beyond).

476. *See id.* (using 40 acres and a mule as the same starting point).

477. *Id.*

D. Answering The Question Of How Should Reparations Be Funded

The most feasible approach is deficit spending because the taxes needed to support such an expensive program would be enormous.⁴⁷⁸ Deficit spending—which is the government spending more than it collects—can fund reparations without having to impose new taxes.⁴⁷⁹ Also, it would not require any changes in tax rates, and if reparations provide a stimulus, the reparations program could generate a tax revenue to fund the program.⁴⁸⁰ Just as the Federal Reserve funded investment banks during the Great Recession, it could fund reparations in the same manner.⁴⁸¹ There is precedent for this beginning in 1833; the Slavery Abolition Act was passed by the United Kingdom across most of the British Empire.⁴⁸² The United Kingdom paid to liberate its enslaved population, by paying owners £20 million which was achieved through deficit spending (£2,4 billion/\$3.11 billion today).⁴⁸³ To put the cost of slavery reparations into context: reparations would be less expensive than the current proposals for Medicare for All, and the Green New Deal, at \$20.5 trillion and an estimated \$50-\$90 trillion, respectively.⁴⁸⁴

478. See Wills, *supra* note 6 (“How would a slavery reparations programs be funded? Deficit spending is the most feasible approach. The taxed needed to support such an expensive program would be onerous”).

479. See Samara Lynn and Catherine Thorbecke, *What America Owes: How Reparations Would Look and Who Would Pay*, ABC NEWS (Sept. 27, 2020, 9:00 AM), <https://abcnews.go.com/Business/america-owes-reparations-pay/story?id=72863094> [<https://perma.cc/EK8X-KAFU>] (explaining what deficit spending is).

480. See *id.* (“Deficit spending—defined as the government spending more than it collects—Darity and Mullen write, would require no changes in tax rates, and if reparations provide a stimulus, could actually generate a tax revenue to fund the program”).

481. See *id.* (discussing that reparations could and should be funded in a way similar to the way investment banks were funded during the Great Recession).

482. See Wills, *supra* note 6 (discussing the precedent which exists for the deficit funding of reparations).

483. See *id.* (explaining the cost of the reparations program in Britain); see generally Joshua Barrie & Tristan Cork, *How Taxpayers Were Still Paying for British Slave Trade Nearly 200 Years Later*, MIRROR (Feb. 13, 2018, 4:01 PM), <https://www.mirror.co.uk/news/uk-news/taxpayers-still-paying-british-slave-12019829> [<https://perma.cc/Z57K-JG5U>] (discussing the present day cost to taxpayers of Britain’s reparations).

484. See generally Wills, *supra* note 6; see generally Alice Miranda Ollstein & Alex Thompson, *Warren Tries to go on Offense with \$20.5 Trillion Medicare for All Plan*, POLITICO (Nov. 1, 2019, 9:17 AM), <https://www.politico.com/news/2019/11/01/elizabeth-warren-medicare-for-all-plan-063775> (last updated Nov. 1, 2019, 11:21 AM) [<https://perma.cc/CXS4-MJLS>] (laying out the costs of medicare for all); Jessica McDonald, *How Much Will the ‘Green New Deal’ Cost?*, FACT CHECK, (Mar. 14, 2019) <https://www.factcheck.org/2019/03/how-much-will-the-green-new->

E. Who Should Qualify For A Payment To Be Paid

In the latest census, almost 47 million Americans self-identified as Black or African American—the vast majority of which descend from slaves rather than recent migrants.⁴⁸⁵ William Darity, Duke University's economist, puts forth two conditions for qualification into this group of individuals receiving reparations: (1) identify as African American for at least 10 years on a legal document; and (2) have at least one ancestor who was enslaved in the United States.⁴⁸⁶ Mr. Darity explains that “the 10-year rule would help screen out anyone trying to cash in on a windfall.”⁴⁸⁷ Acknowledging that the task of identifying a person's slavery lineage is daunting, Cohen suggests comparing the 1860 and 1870 census, the last census where slaves were counted without names, and the first census where they were; military service records, pension records, estate documents, slave-ship manifests and inheritance documents were also suggested as modes of identifying a person's lineage.⁴⁸⁸

F. There Are Various Solutions For Reparations To Be Paid Out

Since Michigan Representative John Conyers's initial introduction of HR 3745, “scholars have fashioned two competing redress models.”⁴⁸⁹ Law professor Roy Brooks – writing for the *Los Angeles Times* – explains, “the first is the settlement model, also called the tort model.”⁴⁹⁰ Supporters of the tort model believe actions such as slavery and Jim Crow should not go unpunished, nor victims without relief; so, redress is seen not so much as a moral issue, but a legal claim; these ideas are pushed forward in this model using the language found in tort litigation such as property and restitution law, calculation of damages and statutes of

deal-cost/ [https://perma.cc/8ULF-KFY5] (examining the true costs of the proposed Green New Deal).

485. See Cohen, *supra* note 469 (providing an overview of how many Americans identify as African American or Black).

486. See *id.* (providing context on making this distinction, the author notes that “according to these criteria, Oprah Winfrey, who has traced her DNA to slaves captured in West Africa in the early 19th century, would qualify. Former President Barack Obama, the son of a white American mother and a Kenyan father, might not. Mr. Darity estimates that roughly 30 million Americans would be eligible”).

487. *Id.*

488. See *id.* (listing different genealogical and historical documents that would possibly be useful to identify the lineage of enslaved persons in the United States).

489. Brooks, *supra* note 256.

490. *Id.*

limitation.⁴⁹¹ He explains that “this model is backward-looking and victim-focused. Its reparative focus is designed to financially compensate victims for their demonstrable loss, and, sometimes, to deliver punitive justice.”⁴⁹² Patricia Cohen writing in the *New York Times* details how “in the United States, after a congressional study, people of Japanese descent who were forced into internment camps during World War II received direct payments of \$20,000 each in 1988 and a formal apology.”⁴⁹³ Duke University economist William Darity advocates that “for both substantive and symbolic reasons, some important component must be direct payment to eligible recipients.”⁴⁹⁴

Direct compensation programs can take many other forms; a tort reparations program in the United States could adopt a single method or several at once.⁴⁹⁵ A one-time check for families, vouchers for college or medical insurance, access to a trust fund of sorts that would allow for the financing of a business or home, are all ways in which individuals could receive direct payments.⁴⁹⁶ Like the cash payments and subsidized home mortgages which built substantial white middle-class wealth after World War II, direct benefits could target those excluded or traditionally preyed upon by predatory lending.⁴⁹⁷ Another form of direct payment could be for first generation college students in the mode of free tuition or financial support at universities and colleges.⁴⁹⁸ Further, one-time endowments to establish museums, or historical exhibits on slavery, could be made possible through reparation funds.⁴⁹⁹ An example of this

491. *See id.* (analyzing the use of tort language within this model of redress and why the proponents of this plan feel so strongly about it).

492. *Id.*

493. Cohen, *supra* note 469; *see* Brooks, *supra* note 256 (supporting Cohen’s claims by providing brief history of reparation like apologies to Japanese Americans after treatment in World War II).

494. Cohen, *supra* note 469.

495. *See id.* (informing the different ways direct payment systems could work).

496. *See id.* (enumerating forms of direct payments for families that would help alleviate some of the most stressful financial burdens).

497. *See But Reparations Mean More Than a Cash Payout, Right?*, ST. LOUIS DISPATCH (Aug. 10, 2020) https://www.stltoday.com/but-reparations-mean-more-than-a-cash-payout-right/article_393e0439-5082-5600-90d7-005b02d52072.html [https://perma.cc/DRB3-KX37] (comparing possible direct payments for reparations to direct payments used at the end of World War II).

498. *See id.* (describing other modes of direct payments that could be used to the benefit of this generation to advance their education and place foundations for future generations).

499. *See id.* (continuing to offer alternative forms of direct payments that would enhance the quality of life and knowledge surrounding enslaved people and their descendants).

can be seen in Asheville, where the city council passed a resolution which mandates not direct cash payments to descendants of enslaved persons, but instead is placing that money into areas where Black residents historically face disparities.⁵⁰⁰

A criticism of using this model as a sole approach for reparations is that it can exaggerate the complexity and contentiousness of what ought to be a mutual movement between Blacks and whites toward racial reconciliation.⁵⁰¹ In addition, there is no apology or admission of guilt by the perpetrator under the tort model; upon settlement, perpetrators can declare victory and go home without personal accountability.⁵⁰² As for the victims of apartheid, those who receive cash reparations through settlement are poor again less than a year of receiving them.⁵⁰³

The second redress model, known as the “Atonement model,” emphasizes long-term investments in education, housing and businesses that build up wealth.⁵⁰⁴ Redress through the atonement model occurs in two stages.⁵⁰⁵ The first step has two parts: first, the perpetrator issues an apology and gives some form of reparations; second, the victims weigh the reparations to determine the sincerity of the apology.⁵⁰⁶ Reparations could come in the form of special social programs or land resources.⁵⁰⁷ It could also mean a mix of cash and programs targeted to help Black

500. *See id.* (offering a modern day example of how reparation payments are being used in a way beyond direct cash payments to descendants).

501. *See* Brooks, *supra* note 256 (“This approach, in my view, exaggerates the complexity and contentiousness of what ought to be a mutual movement toward racial reconciliation”); *accord* Lovegrove, *supra* note 248 (complaining of certain proposals toward reparations).

502. *See* Roy L. Brooks, Opinion, *Op-Ed: Reparations Are an Opportunity to Turn a Corner on Race Relations*, L.A. TIMES (Apr. 23, 2019, 10:14 AM), <https://www.latimes.com/opinion/op-ed/la-oe-brooks-reparations-20190423-story.html> [<https://perma.cc/K5AL-S4WA>] (discussing the tort model in detail).

503. *See id.* (revealing that even victims do not fare well once the payments are received and noting that most victims have returned to the same status within a year financially).

504. *See id.* (advocating the atonement model in his book “Atonement and Forgiveness: A New Model for Black Reparations.” This redress model is favored by Roy L. Brooks, a law professor at the University of San Diego).

505. *Id.* (describing the form in which atonement is set forth through this model).

506. *Id.* (explaining the steps found within this model for atonement and how they impact individuals).

507. *See* P.R. Lockhart, *What Slavery Reparations Could Look Like*, NBC NEWS (May 12, 2021, 5:00 AM), <https://www.nbcnews.com/news/nbcblk/slavery-reparations-federal-goverations-looks-2021-rcna900> [<https://perma.cc/W7YV-NHU9>] (giving land grants, housing grants, or establishing economic programs are possible avenues to deliver reparations).

Americans—albeit cash plays a minor role in this mix.⁵⁰⁸ “Rehabilitative” reparations are most effective because they are designed to foster self-empowerment and community-building.⁵⁰⁹

The best solution is a new model, the “Atonement Plus” Model, which takes the best of what both the Settlement and Atonement offer and adding specific programs and legislation to provide for practical, moral, and just compensation for Blacks.

To facilitate the implementation of reparations, a new federal executive department level position should be created by the government, similar in concept to what the Freedmen’s Bureau was intended to accomplish during Reconstruction.⁵¹⁰ It would have the same authority granted to other Executive Departments such as the Office of Management and Budget, the Council of Economic Advisors, or the National Security Council.⁵¹¹ This new Executive Department would be titled the Office for Reconciliation and Reparations (ORAR), and its primary responsibility would be to facilitate and coordinate the federal

508. See Brooks, *supra* note 502 (providing cash could be a small portion of a greater reparations package, which should largely consist of rehabilitative programs).

509. See *id.* (“In the case of African Americans, rehabilitative reparations must begin with the lingering effects of slavery and Jim Crow, including the racial gaps in homeownership (43% of African Americans are homeowners, compared with 73% of whites), net family wealth (the median white household owns 86 times the assets of the median Black household) and educational funding (predominantly Black school districts annually receive \$23 billion less in K-12 funding than similarly sized white school districts”).

510. Cf. African American Heritage, *The Freedmen’s Bureau*, NAT’L ARCHIVES, <https://www.archives.gov/research/african-americans/freedmens-bureau> [<https://perma.cc/F3A9-B7GK>] (last updated October 28, 2021) (providing relief through extended services, the Bureau’s functions included, “issuing rations and clothing, operating hospitals and refugee camps, and supervising labor contracts between planters and freedpeople. The Bureau also managed apprenticeship disputes and complaints, assisted benevolent societies in the establishment of schools, helped in legalizing marriages entered into during slavery, and provided transportation to refugees and freedpeople who were attempting to reunite with their family or relocate to other parts of the country. As Congress extended the life of the Bureau, it added other duties, such as assisting Black soldiers and sailors in obtaining back pay, bounty payments, and pensions.”)

511. Cf. *Office of Management and Budget*, THE WHITE HOUSE, <https://www.whitehouse.gov/omb/> [<https://perma.cc/DBZ3-B7FG>] (“assist the President in meeting policy, budget, management, and regulatory objectives and to fulfill the agency’s statutory responsibilities”); *Council on Economic Advisors*, THE WHITE HOUSE, <https://www.whitehouse.gov/cea/> [<https://perma.cc/5HQW-VGSG>] (“Established by Congress in 1946, the Council of Economic Advisors is charged with advising the President on economic policy based on data, research, and evidence.”); *National Security Council* THE WHITE HOUSE, <https://www.whitehouse.gov/nsc/> [<https://perma.cc/R42E-8RPP>] (“facilitates coordination between domestic and foreign policy as well as among traditional national security, economic security, health security, and environmental security.”).

government's monetary disbursements and program reparations to eligible recipients.

The harm done to Black Americans was multifaceted and complex, so the relief will necessarily be the same.⁵¹² While the task which would be set before the ORAR would be daunting and take time, not every proposed solution would have to be undertaken at once. As proposed solutions are identified and prioritized for implementation, readdressing the needs of the community will need to be annualized, and should be transparent and open. In addition to monetary payments, non-monetary reparations would come in the form of special programs specifically designed to correct the historical racial disparities in six major areas: housing, education, voting, healthcare, wealth distribution, and criminal justice reform.⁵¹³ Specific solutions should include, but are not limited to, the following solutions.

Implement a 10-20-30 policy. Some federal policies use a formula which "calls for directing 10% of government funds to counties where 20% or more of the population has lived below the poverty line for the past thirty years."⁵¹⁴

Pass a federal anti-lynching bill. Individuals lynched in the United States are historically and overwhelmingly Black.⁵¹⁵ Even though the Senate formally apologized in 2005 for its failure to ban murder by lynching, members of Congress continue the century-long battle to oppose the passage of federal anti-lynching laws.⁵¹⁶ The most recent bill,

512. Cf. Richard V. Reeves et al., *The Challenges Facing Black Men – and the Case for Action*, BROOKINGS (Nov. 19, 2020), <https://www.brookings.edu/blog/up-front/2020/11/19/the-challenges-facing-black-men-and-the-case-for-action/> [<https://perma.cc/BW94-2HX6>] (exhibiting the clear disparity of Black Americans today. For example, Black Americans earn at least two hundred dollars less than their white American counterparts. This data is demonstrative of the historical impact of slavery and its racist parts.)

513. Cf. *Reparations Plan*, NAT'L AFR.-AM. REPARATIONS COMM'N, <https://reparationscomm.org/reparations-plan/> [<https://perma.cc/Y2MP-KWV6>] (listing ten-point plan to address reparations, including: Apology, Repatriation, Land, Funds, Health & Wellness, Education, Housing & Wealth Generation, Info & Comms Infrastructure, Sacred Sites & Monuments, and the Criminal Justice System)

514. Lovegrove, *supra* note 248.

515. H.R. Rep. No. 116-267, at 2 (2019) ("In 1892, the Tuskegee Institute began to record statistics of lynchings and reported that 4,742 reported incidents had taken place by 1968, of which 3,445 of the victims were African Americans. Through additional research, the Equal Justice Initiative ('EJI') documented 4,075 'racial terror lynchings' in twelve Southern states between the end of Reconstruction in 1877 and 1950.")

516. See Nicholas Fandos, *Frustration and Fury as Rand Paul Holds Up Anti-Lynching Bill in Senate*, N.Y. TIMES (June 5, 2020), <https://www.nytimes.com/2020/06/05/us/politics/rand-paul->

the Emmitt Till Antilynching Act, passed the House in 2020 by a vote margin of 410 to 4, and has the backing of 99 members of the Senate.⁵¹⁷

Fund reparations through local communities. Direct local involvement is necessary and use of the previously mentioned 10-20-30 rule can help determine where reparation funds should be best utilized.⁵¹⁸

The issue with past grants issued by the government is that they were administered and controlled through Washington DC; because grants may work in one community but not another, the best way to administer funds to communities in need is through the local Black leaders who have intimate knowledge of their community and know best where and how the funds should be disbursed.⁵¹⁹

American military veterans enjoy benefits and privileges for serving their country.⁵²⁰ There are benefits which last the lifetime of the veteran, and others which have specific time constraints to be used, commencing from the day the veteran separates from the military.⁵²¹ Benefits similar to those provided to veterans can be established for Blacks, with similar entitlement windows.⁵²² Few programs to consider are lifetime health benefits; subsidized or free lifetime education benefits; small business grants and loans with favorable interest rates like what banks charge each other when lending money; guaranteed down payment and favorable home mortgage loans, with zero interest.⁵²³

anti-lynching-bill-senate.html [https://perma.cc/GG2R-EXPJ] (noting in the 20th Century alone over 200 attempts by Congress to outlaw murder by lynching).

517. *See id.* (discussing steps taken to outlaw lynching in the United States).

518. *See generally*, Lovegrove, *supra* note 248 (discussing the reasons for enacting the 10-20-30 rule to responsibly address racial inequity).

519. *See generally, id.* (explaining that the more narrow the assistance is, the more direct help struggling communities will receive).

520. *See Military Benefits at a Glance*, MIL. (May 11, 2021), <https://www.military.com/join-armed-forces/military-benefits-overview.html> [https://perma.cc/N543-KNMV] (listing the various benefits provided to U.S. military members and veterans).

521. *See id.* (describing veterans' benefits).

522. *See Minority Veterans Program*, U.S. DEPT. OF VETERANS AFFS., <https://www.benefits.va.gov/persona/veteran-minority.asp> [https://perma.cc/WR7B-GDYP] ("Minority Veterans may be eligible for a wide-variety of benefits available to all U.S. military Veterans.").

523. *Cf.* Connor Sheehan & Mark D. Hayward, *Black/White Differences in Mortality Among Veteran and Non-Veteran Males*, NCBI (Feb. 15, 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6715417/> [https://perma.cc/2PK7-RF7Y] ("There are reasons to expect that racial disparities in mortality among veterans are smaller than those for non-veterans. For example, [B]lacks are favorably selected into the military, receive relatively

Creation of a domestic Peace Corps and aggressive expansion of student loan forgiveness programs for recent college graduates who volunteer to work in designated 10-20-30 zones.

There are several legislative actions that can be implemented to protect Black communities from discrimination, law enforcement, and the judicial system.⁵²⁴ Actions include state and localities passing legislation to criminalize discriminatory 911 calls, and implementing policing and criminal justice reforms to review sentencing guidelines.⁵²⁵ Additional actions include: (1) moving the cost of incarceration from the states to the cities; (2) making aggressive changes to facilitate civilian oversight of local police, with the goals of improving overall transparency, gaining

equitable treatment within the military, after service accrue higher socioeconomic status and receive health and other benefits after service . . . We find that [B]lack/ [W]hite disparities in mortality are smaller for veterans than for non-veterans, and that this is explained by the elevated socioeconomic resources of [B]lack veterans relative to [B]lack non-veterans.”); *See also Our \$30 Billion Racial Equity Commitment Equality*, JP MORGAN CHASE & CO., https://www.jpmorganchase.com/impact/path-forward?jp_cmp=en/24440683/ext/141609696/278147087 [https://perma.cc/L38H-L8S2] (recognizing structural barriers in the U.S. have created profound racial inequalities, which have been made worse by the COVID-19 pandemic. The existing racial wealth gap puts a strain on families’ economic mobility and restricts the U.S. economy. JP Morgan Bank is committing \$30 billion over the next five years to drive an inclusive recovery, support employees and break down barriers of systemic racism).

524. *E.g. Federal Laws and Statutes*, U.S. DEPT. OF JUST., <https://www.justice.gov/hatecrimes/laws-and-policies> [https://perma.cc/NL8U-U3EJ] (showing which states have implemented state laws, codes, and statutes to protect against hate crimes on the basis of race and color).

525. *See Governor Murphy Signs Legislation Criminalizing a False 9-1-1 Call Based on Race or Protected Class*, OFF. SITE OF THE STATE OF N.J. (Aug.31, 2020), <https://nj.gov/governor/news/news/562020/approved/20200831b.shtml> [https://perma.cc/3TJS-R3JY]; accord Geoff Herbert, *False, Race-Based Accusations to 911 May Become a Hate Crime*, NNY 360 (June 8, 2020), https://www.nny360.com/top_stories/false-race-based-accusations-to-911-may-become-a-hate-crime/article_296d8fd1-cb5f-5f53-8df0-4031c675beaf.html [https://perma.cc/6LUJ-5XX6] (“[New Jersey] Governor Phil Murphy today signed legislation (A1906), which would amend current law to include false incrimination and filing a false police report as a form of bias intimidation. The bill also establishes crime of false 9-1-1 call with purpose to intimidate or harass based on race or other protected class. ‘Using the threat of a 9-1-1 call or police report as an intimidation tactic against people of color is an unacceptable, abhorrent form of discrimination . . . This irresponsible misuse of our 9-1-1 system places victims in a potentially dangerous situation[] and can erode trust between Black and Brown New Jerseyans and law enforcement. Individuals who choose to weaponize this form of intimidation should held be accountable to the fullest extent of the law.”); accord Sophie Quinton, *State Lawmakers Crack Down on Racially Motivated 911 Calls*, PEW (July 14, 2020), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/07/14/state-lawmakers-crack-down-on-racially-motivated-911-calls> [https://perma.cc/J334-ELVT] (discussing state lawmaker’s attempt to make false, race-based accusations hate crime).

access to critical pieces of information, providing the authority to review police policy;⁵²⁶ (3) and, granting access to records, and increasing their authority to investigate police misconduct.⁵²⁷ Congress should act such that continued eligibility for federal funding is contingent on every law enforcement agency actively participating in FBI's Uniform Crime Reporting program.⁵²⁸ This can be accomplished through national policing standards, including the mandatory reporting of crime statistics to the FBI, particularly hate crimes.⁵²⁹ Failure to participate or report data immediately would cut off continued federal funding to law enforcement agencies, including the ability of local state and local law enforcement agencies to purchase surplus military weapons and equipment for use in their jurisdictions. Furthermore, state and local

526. See UNITED NATIONS OFFICE ON DRUGS AND CRIME, HANDBOOK ON POLICE ACCOUNTABILITY, OVERSIGHT AND INTEGRITY 8 (2011) ("Enhancing police accountability and integrity is primarily meant to establish, restore or enhance public trust and (re-)build the legitimacy that is a prerequisite for effective policing. This may be achieved through establishing a system of civilian oversight. Accepting external, civilian scrutiny is a hallmark of a democratic police force, that is, one that is responsive and accountable to the needs of the public.").

527. See e.g., *Officer in Columbus, Ohio Fatally Shoots Black Man and Only then Turns on Body Camera, Officials Say*, CBS NEWS (Dec. 23, 2020, 5:26 AM), <https://www.cbsnews.com/news/columbus-ohio-police-shooting-black-man/> [<https://perma.cc/HK2A-CJVY>] (discussing an officer's misconduct in turning off their body camera during an altercation with a Black man, which resulted in the officer shooting and killing the Black man); cf. Kenny Jacoby, *How Cops Who Use Force and Even Kill Can Hide Their Names From the Public*, PROPUBLICA (Oct. 29, 2020, 6:00 AM), https://www.propublica.org/article/how-cops-who-use-force-and-even-kill-can-hide-their-names-from-the-public?c_src=21932898.53796%27+:%27%27+%7D%7D [<https://perma.cc/2HZD-QSLA>] (citing instances of police departments in Florida and the Dakotas repeatedly using Marcy's Law, enacted to protect crime victim's identities, to hide the names of officers who use force on the job).

528. See Brian Naylor, *How Federal Dollars Fund Local Police*, NAT'L PUBLIC RADIO (June 9, 2020, 5:10 AM), <https://www.npr.org/2020/06/09/872387351/how-federal-dollars-fund-local-police> [<https://perma.cc/5XBG-5CBQ>] (explaining just how much money the federal government spends on various law enforcement agencies. The Department of Justice, which oversees the COPS program, says it has provided \$14 billion since its inception in 1994 to hire and train local police involved in community policing. The Department of Justice also administers the Edward Byrne Memorial Justice Assistance Grant Program which provides funds to states, territories, tribes and local government for law enforcement and corrections programs. According to its website, there was nearly \$264 million available in the 2019 fiscal year).

529. See e.g. Michael Balsamo, *Hate Crimes in US Reach Highest Level in More Than a Decade*, ASSOC. PRESS (Nov. 16, 2020), <https://apnews.com/article/hate-crimes-rise-FBI-data-ebbcadca8458aba96575da905650120d> [<https://perma.cc/C8SM-WBQB>] (bemoaning the fact that in 2019, only 2,172 out of about 15,000 participating law enforcement agencies across the country reported hate crime data to the FBI. While the number of agencies reporting hate crimes increased, the number of agencies participating in the program decreased. Many police agencies did not submit any hate crime data, which is an impediment for Justice of Department officials).

governments should consider decreasing the power of the police unions, and exert more control when authorizing municipal funding for law enforcement.⁵³⁰ States should be required to enact legislation to disassociate the revenue that is generated from breaking minor laws; misdemeanors should not fund police departments.⁵³¹ If defunding of the police occurs it should not be misinterpreted; instead, the focus should turn to reorganizing community policing priorities and policy, and allocating funding from police departments to organizations that are better trained and equipped to handle non-police calls and emergencies.⁵³² Moreover, police agencies must stop being the default solution or sole option for every emergency and nonemergency situation that they are called to respond.⁵³³ Additionally, increased prosecutor accountability and discretion training should occur at law schools.⁵³⁴

530. See, Mike Maciag, *Addicted to Fines: Small Towns in Much of the Country are Dangerously Dependent on Punitive Fines and Fees*, GOVERNING (Aug. 19, 2019), <https://www.governing.com/archive/gov-addicted-to-fines.html> [https://perma.cc/X9C9-QF8Q] (examining data from nearly 600 jurisdictions nationwide shows revenue from misdemeanor fines account for more than ten percent of general fund revenues, and in 284 jurisdictions, it is more than twenty percent. When fine and forfeiture revenues in all funds are considered, more than 720 localities reported annual revenues exceeding \$100 for every adult resident. Rural areas with high poverty have especially high rates. The jurisdictions are far more common in the South than elsewhere, particularly Arkansas, Georgia, Louisiana, Oklahoma and Texas, which affects Black communities disproportionately).

531. See, *id.* (detailing the need to disassociate revenue generated from minor laws and tickets and to use that revenue for Black communities).

532. See Rashawn Ray, *What Does 'Defund the Police' Mean and Does It Have Merit?*, BROOKINGS (June 19, 2020), <https://www.brookings.edu/blog/fixgov/2020/06/19/what-does-defund-the-police-mean-and-does-it-have-merit/> [https://perma.cc/955Z-QHGQ] (outlining some of the main arguments for defending the police) (“‘Defund the police’ means reallocating or redirecting funding away from the police department to other government agencies funded by the local municipality. That’s it. It’s that simple. Defund does not mean abolish policing . . . Different from abolishing and starting anew, defunding police highlights fiscal responsibility, advocates for a market-driven approach to taxpayer money, and has some potential benefits that will reduce police violence and crime.”).

533. See Amos Irwin & Betsy Pearl, *The Community Responder Model: How Cities Can Send the Right Responder to Every 911 Call*, CTR. FOR AM. PROGRESS (Oct. 28, 2020), <https://www.americanprogress.org/article/community-responder-model/> [https://perma.cc/TFR5-ZZ3F] (“While many 911 calls do merit an emergency police response, unnecessarily dispatching armed officers to calls where their presence is unnecessary is more than just an ineffective use of safety resources; it can also create substantially adverse outcomes for communities of color, individuals with behavioral health disorders and disabilities, and other groups who have been disproportionately affected by the American criminal justice system.”).

534. See generally, Angela J. Davis, *The American Prosecutor - Power, Discretion, and Misconduct*, 23

Prosecutors must move from the traditional role of sticking to the absolute letter of the law to considering cultural and historical issues facing Black communities when determining what or even when to charge for crimes.⁵³⁵ For example, in both Los Angeles and San Antonio, the elected District Attorneys have implemented policies reflecting an entirely different approach to how they decide which crimes to prosecute, which will have a positive impact on communities of color.⁵³⁶

Implementing nationwide compensation programs for those who have been wrongfully convicted and exonerated.⁵³⁷

Conceding that no system is perfect, the government's public recognition of the harm inflicted upon a wrongfully convicted person helps to foster his healing process, while assuring the public that the government –

CRIM. JUST. 24 (2008) (demonstrating how prosecutors bear the brunt of the responsibility for the race and class disparities in the American criminal justice system).

535. *See generally, id.* (discussing the need for prosecutors to move beyond the black and white letters of the law and to fully examine individual cases based on factors beyond what the law states).

536. *See* Elizabeth Zavala, *D.A. In San Antonio Vows More Careful Scrutiny Of Police Use-Of-Force Cases*, SAN ANTONIO EXPRESS NEWS, [https://www.expressnews.com/news/local/article/D-A-in-San-Antonio-vows-more-careful-scrutiny-of-](https://www.expressnews.com/news/local/article/D-A-in-San-Antonio-vows-more-careful-scrutiny-of-15653628.php?utm_campaign=mysa&utm_source=article&utm_medium=https%3A%2F%2Fwww.lmtonline.com%2Fnews%2Flocal%2Farticle%2FExpress-Briefing-Bexar-County-D-A-vows-closer-15657246.php%3F_native_ads%3D1%26utm_campaign%3DCMS%2520Sharing%2520Tools%2520(Desktop)%26utm_source%3Dshare-by-email%26utm_medium%3Demail)

[15653628.php?utm_campaign=mysa&utm_source=article&utm_medium=https%3A%2F%2Fwww.lmtonline.com%2Fnews%2Flocal%2Farticle%2FExpress-Briefing-Bexar-County-D-A-vows-closer-](https://www.expressnews.com/news/local/article/D-A-in-San-Antonio-vows-more-careful-scrutiny-of-15653628.php?utm_campaign=mysa&utm_source=article&utm_medium=https%3A%2F%2Fwww.lmtonline.com%2Fnews%2Flocal%2Farticle%2FExpress-Briefing-Bexar-County-D-A-vows-closer-15657246.php%3F_native_ads%3D1%26utm_campaign%3DCMS%2520Sharing%2520Tools%2520(Desktop)%26utm_source%3Dshare-by-email%26utm_medium%3Demail)

[15657246.php%3F_native_ads%3D1%26utm_campaign%3DCMS%2520Sharing%2520Tools%2520\(Desktop\)%26utm_source%3Dshare-by-email%26utm_medium%3Demail](https://www.expressnews.com/news/local/article/D-A-in-San-Antonio-vows-more-careful-scrutiny-of-15653628.php?utm_campaign=mysa&utm_source=article&utm_medium=https%3A%2F%2Fwww.lmtonline.com%2Fnews%2Flocal%2Farticle%2FExpress-Briefing-Bexar-County-D-A-vows-closer-15657246.php%3F_native_ads%3D1%26utm_campaign%3DCMS%2520Sharing%2520Tools%2520(Desktop)%26utm_source%3Dshare-by-email%26utm_medium%3Demail)

[<https://perma.cc/ZRA8-FTV4>] (showing how Bexar County's Criminal District Attorney Joe Gonzalez created a new Civil Rights Division reporting directly to him, asking Bexar County Commissioners to allocate \$385,000 to adequately staff it); *see also* David Ganezer, *Prostitution, Trespassing, Disturbing the Peace, Driving Without a License And Loitering Are Now Effectively Legal In LA County*, SANTA MONICA OBSERVER (Dec. 10, 2020), <https://www.smobserved.com/story/2020/12/10/news/prostitution-trespassing-disturbing-the-peace-driving-without-a-license-and-loitering-are-now-effectively-legal-in-la-county/5115.html> [<https://perma.cc/KBM6-J9G6>] (citing Los Angeles' new District Attorney George Gascon mandate to no longer enforce laws which he says historically have been used to discriminate against Black and Brown people in white areas. He will not prosecute women for prostitution, imprison people for trespassing, disturbing the peace, driving without a license, or loitering). .

537. *See Compensating the Wrongly Convicted*, INNOCENCE PROJECT, <https://innocenceproject.org/compensating-wrongly-convicted/> [<https://perma.cc/T284-K5J8>] (distinguishing itself from all other states, Texas law provides that persons wrongfully imprisoned are eligible to be paid a lump sum of up to \$80,000 for each year they spent in prison. They also are eligible to receive monthly annuity payments for another \$80,000 total per year as long as they live, provided they aren't later convicted of a felony. 15 states do not have compensation statutes: Alaska, Arizona, Arkansas, Delaware, Georgia, Idaho, Kentucky, New Mexico, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, and Wyoming).

regardless of fault – is willing to take ownership of its wrongs or errors. The federal government, the District of Columbia, and 35 states have compensation statutes of some form.⁵³⁸

Other non-cash solutions qualify as reparations.⁵³⁹ Democrat, Ayanna Presley, and Libertarian, Justin Amash, have introduced legislation that would end Qualified Immunity for all public employees, including non-law enforcement personnel.⁵⁴⁰ This proposed legislation is known as the End Qualified Immunity Act, an act that would override Supreme Court precedent's reading of Qualified Immunity into 42 U.S.C. § 1983.⁵⁴¹ Speaker Nancy Pelosi also introduced the Justice and Policing Act (which already has over 200 cosponsors), an act that would also eliminate Qualified Immunity as a defense under Section 1983, but only for police officers.⁵⁴² The bill also proposes a ban on chokeholds, no knock warrants in drug cases, eliminates religious and racial profiling, makes it easier for police to be prosecuted, makes lynching a federal hate crime, and develops a federal use of force standard.⁵⁴³

Other non-legal, financial, educational, or health organizations are beginning to acknowledge the role that they have played in the past.⁵⁴⁴

538. *See id.* (“Conceding that no system is perfect, the government’s public recognition of the harm inflicted upon a wrongfully convicted person helps to foster his healing process, while assuring the public that the government – regardless of fault – is willing to take ownership of its wrongs or errors. The federal government, the District of Columbia, and 35 states have compensation statutes of some form”).

539. *See generally* Ending Qualified Immunity Act, H.R.7085 116th Congress (2019-2020) (discussing other forms of reparations that do not include cash such as the opportunity to seek charges against those normally protected by qualified immunity); *see also* George Floyd Justice in Policing Act of 2020, H.R. 7120 116th Cong. (2020) (offering another form of non-cash reparations for the harms done to Black Americans).

540. *See generally* Ending Qualified Immunity Act, H.R.7085 116th Congress (2019-2020) (outlining legislation introduced to end Qualified Immunity).

541. *See id.* (explaining how the law would also clarify that in future situations, the Supreme Court’s earlier interpretations of 42 U.S. Code § 1983, which gave police immunity when they acted generally in good faith during the performance of their job duties, wouldn’t apply; consequently, eliminating situations where courts give police illegal passes that arise from defected warrants).

542. *See generally* George Floyd Justice in Policing Act of 2020, H.R. 7120 116th Cong (2020) (discussing the legislation which would only end qualified immunity for police officers).

543. *See generally id.* (discussing changes to policing tactics that will allow for safer interactions between police and individuals of color).

544. *See* Timothy Bella, *Kansas City Star Apologizes for Decades Of Racist Coverage Of Black People: ‘It Is Time That We Own Our History’*, WASH. POST (Dec 21, 2020), <https://www.washingtonpost.com/nation/2020/12/21/kansascity-star-apology-black-people/> [<https://perma.cc/QC7U-7CFF>] (examining the unfair and often biased coverage of Black

In 2020, the *Kansas City Star* detailed the paper's latest investigation into a trusted, local institution that had "disenfranchised, ignored and scorned" the Black community for decades; it identified itself.⁵⁴⁵ The *Star* issued an apology on Sunday, December 21, 2020 for the way the newspaper had previously covered the Black community for decades, including how Black people only made the paper in its early years if they were accused of a crime.⁵⁴⁶ The *Star* is not the only major newspaper that has demonstrated this type of behavior.⁵⁴⁷ It has been shown that "protests and petitions over racial inequities have spilled into public view at major publications, including the *New York Times*, *Wall Street Journal*, *Los Angeles Times*, *Philadelphia Inquirer* and *Pittsburgh Post-Gazette*."⁵⁴⁸ At *The Washington Post*, these actions have intensified internal complaints by employees.⁵⁴⁹ The newsroom uprisings are partially about the lack of minority employees in key jobs and leadership positions, but also because of how stories about race are reported and framed, and who they are reported and framed by.⁵⁵⁰ It is argued that "mainstream news organizations are long overdue for a cultural change."⁵⁵¹

President Harry Truman desegregated the military when the Defense Department was created in 1947, yet even within the military, there

Americans throughout the history of the business); see also Paul Farhi & Sarah Ellison, *Ignited by Public Protests, American Newsrooms Are Having Their Own Racial Reckoning*, WASH. POST (June 13, 2020, 5:00 AM), https://www.washingtonpost.com/lifestyle/media/ignited-by-public-protests-american-newsrooms-are-having-their-own-racial-reckoning/2020/06/12/be622bce-a995-11ea-94d2-d7bc43b26bf9_story.html [<https://perma.cc/SY23-8YAV>] (discussing the need and movement within news entities to right the wrongs of past bias and discrimination towards individuals of color).

545. See Bella, *supra* note 544 (premising The Washington Post article by introducing the racial discrimination that went on for decades within the Kansas City Star's newsroom).

546. See *id.* (detailing the apology issued by Mike Frannin, The Star's paper editor and president).

547. See Farhi & Ellison, *supra* note 544 (demonstrating that multiple newspaper agencies are now apologizing for years of racist and biased reporting of Black Americans).

548. *Id.* ("Protests and petitions over racial inequities have spilled into public view at major publications, including the *New York Times*, *Wall Street Journal*, *Los Angeles Times*, *Philadelphia Inquirer* and *Pittsburgh Post-Gazette*").

549. See *id.* (discussing the impact made by changes in other newsrooms on the internal dialogue at *The Washington Post*).

550. See *id.* (pointing to the fact that beyond the lack of people in color employed by newsroom agencies, there is also an underlying bias in the reporting which while possibly unintentional, is still detrimental to people of color as a whole).

551. *Id.*

remains vestiges of systemic racism.⁵⁵² The Inspector General for the U.S. Air Force conducted an investigational study into racial disparities within the service in June 2020, largely stemming from the events transpiring from the murder of George Floyd.⁵⁵³ A survey was sent to members in May and the response was overwhelming, the Air Force received completed surveys from 123,758 airmen—a record-breaking response.⁵⁵⁴ Airmen also submitted 29,300 single-spaced pages of feedback on racial disparities.⁵⁵⁵ The Inspector General conducted more than 135 sessions, which were conducted by three teams that traveled to all major commands and which held free-flowing discussions with airmen about their experiences with and observations on racial inequality.⁵⁵⁶ There was so much interest, teams commonly had to add more sessions and extend them beyond the 90 minutes that were originally blocked out.⁵⁵⁷ The investigation studied how Black airmen are affected by law enforcement apprehensions, criminal investigations, military justice, and administrative separations.⁵⁵⁸ The investigation of racial disparities by the Inspector General of the Air Force found widespread differences in the treatment of Black airmen compared to those of other races.⁵⁵⁹ Lieutenant General Sami Said stated Black

552. See Stephen Losey, *Consistent, Widespread Racial Disparities Hurt Black Airmen, IG Study Finds*, AIR FORCE TIMES (Dec. 21, 2020), https://www.airforcetimes.com/news/your-air-force/2020/12/21/consistent-widespread-racial-disparities-hurt-black-airmen-ig-study-finds/?utm_source=Sailthru&utm_medium=email&utm_campaign=Air%20Force%20DNR%2012.22.20&utm_term=Editorial%20-%20Air%20Force%20-%20Daily%20News%20Roundup [<https://perma.cc/HL9R-W79T>] (providing data as evidence that even within the military, unequal justice for minorities in the military for the same offenses as whites result in punishments that are 70% harsher).

553. See Stephen Losey, *Air Force IG on Racial Study: 'No Preordained Outcome'*, AIR FORCE TIMES 4 (Jul. 29, 2020), <https://www.airforcetimes.com/news/your-air-force/2020/07/29/air-force-ig-on-racial-study-no-preordained-outcome/> [<https://perma.cc/GEK4-XA4A>] (stating that the Inspector General of the Air Force launched an investigation regarding racial inequality which was based solely on facts and data).

554. See *id.* (detailing the survey sent out by the Air Force and listing the number of surveys completed).

555. See *id.* (adding the number of pages worth of feedback that were provided by Airmen).

556. See *id.* (elaborating on the sessions conducted at all major commands).

557. See *id.* (noting the success of the sessions held by the Inspector General).

558. See *id.* (specifying the category of individuals the study was tailored to).

559. See *id.* (addressing the racial disparities within the Air Force).

airmen are consistently discriminated against in each category as compared to the overall Air Force.⁵⁶⁰

The progressive political organization Democracy in Color conducted an online poll in a July 2020 which noted that fifty percent of Americans support H.R. 40, an uptick from 2019 when only thirty-one percent said they supported it.⁵⁶¹ According to a poll conducted by the Associated Press, fifty-two percent of Americans, including whites, Blacks, independents, Democrats, and Republicans, believe the government does not spend enough money on improving the conditions of African Americans.⁵⁶² Furthermore, the survey found that about three in ten Americans think the government should be forced to make amends for past racial discrimination.⁵⁶³

Truth commissions have historically helped societies address collective trauma and abuse.⁵⁶⁴ Many nations have undergone the self-examination process of their own unresolved historic injustices which could provide a practical model for the United States.⁵⁶⁵ In fact, over the past three decades, more than forty countries have established truth commissions including Canada, Chile, Ecuador, Ghana, Guatemala, Kenya, Liberia, Morocco, Philippines, Rwanda, Sierra Leone, South

560. *See id.* (reporting Air Force Lieutenant General Sami Said's perspective on the racial disparities within the Air Force).

561. *Compare* Wills, *supra* note 6 (comparing these numbers to a poll conducted by the Economist and YouGov in 2018, indicating a higher opposition to slavery reparations. They surmised that decades of racial stereotypes may have influenced or justified a lack of racial economic equality, because the results indicated that as many as 40% of white Americans believe that Black Americans' lack of economic equality is because they aren't trying hard enough); with Jesse J. Holland, *More Americans Say Gov't Spends Too Little Helping Blacks*, ASSOC. PRESS (Mar. 27, 2019), <https://apnews.com/article/69f6eccb65b242789a1e86e15d755567> [<https://perma.cc/Z2YR-MEGG>]; and Jesse J. Holland, *Millennials More Open to Idea Of Slavery Reparations*, ASSOC. PRESS (May 11, 2016), <https://apnews.com/article/b183a022831d4748963fc8807c204b08> [<https://perma.cc/2W3A-99ML>] (polling showing that both race age plays a significant part in the support for or against cash payments for slavery reparations).

562. *See* Holland, *supra* note 561 (reviewing several surveys that addressed the support and resources provided to the African American community).

563. *See id.* (discussing Americans' perspective of reparations for the African American community).

564. *See* Bonny Ibhawoh, *Do Truth And Reconciliation Commissions Heal Divided Nations?*, CONVERSATION (Jan. 23, 2019, 3:44 PM), <https://theconversation.com/do-truth-and-reconciliation-commissions-heal-divided-nations-109925> [<https://perma.cc/VB5D-F3NJ>] (evaluating truth commissions throughout the world and its impact on those involved).

565. *See id.* (suggesting other countries' Truth and Reconciliation Commissions can serve as an example for Americans' unresolved injustices).

Africa and South Korea.⁵⁶⁶ The hope has been that restorative justice would provide greater healing than the retributive justice modeled most memorably by the Nuremberg Trials after the Second World War.⁵⁶⁷ It is possible for the United States to improve conditions for Black Americans while simultaneously making up for past racial discrimination.

However, South Africa implemented the most recognizable standard for truth commissions.⁵⁶⁸ South Africa President Nelson Mandela mandated a painful, but necessary Truth and Reconciliation Commission to resolve the longstanding segregation and discriminatory policy in the African National Congress.⁵⁶⁹ South Africa's Truth and Reconciliation Commission was not designed to "take South Africa to some idyllic utopia; after a century of colonialism and apartheid, which would not have been realistic."⁵⁷⁰ Rather, it was "designed to save South Africa, then a nuclear power, from an implosion, one that many feared would trigger a wider international war."⁵⁷¹ South Africa's Truth and Reconciliation Commission proceedings were televised throughout the world, entering the homes of hundreds of viewers.⁵⁷² It was recorded to help ensure that the crimes of apartheid would not be forgotten and should never be repeated.⁵⁷³

There are certain best practices that the ORAR can use in the United States. Although the institution of slavery has existed longer than apartheid, the years of Jim Crow and legal segregation were more recent, making South Africa a good example. A truth and reconciliation commission around racism and its long history in the United States and the millions of living Americans who could be considered victims would

566. *See id.* (listing various countries that have created their own truth commissions).

567. *See id.* (expressing the desire for healing through a restorative justice approach rather than a retributive approach).

568. *See id.* (recognizing the set standard for truth commissions established by South Africa).

569. *See id.* (distinguishing Nelson's approach that sought to fight for reform against racist and repressive policies).

570. *Id.*

571. *Id.*

572. *See id.* (reporting how South Africa televised the proceedings).

573. *Cf. Truth Commission: South Africa*, U.S. INST. OF PEACE (Dec. 1, 1995), <https://www.usip.org/publications/1995/12/truth-commission-south-africa> [<https://perma.cc/J6SP-TSA8>] (reiterating the importance of not losing sight of the destruction and devastation caused by the apartheid).

be a difficult task considering the political climate.⁵⁷⁴ That daunting sense of scale might be one factor pushing against a nationwide initiative on race in the United States: “For a commission to work as a mechanism of both truth-telling and justice, it would need to address issues ranging from the history of slavery to school segregation to policing to employment and wealth disparity.”⁵⁷⁵ Activists believe that “any new initiative would need to take more concrete actions.”⁵⁷⁶ It is difficult to imagine a truth commission in the United States, regarding race, that would not prosecute police officers for example.⁵⁷⁷ According to Mapping Police Violence, “Black people account for twenty-eight percent of police murders but only thirteen percent of the population, and in ninety-nine percent of police killings from 2013-19, officers were not charged with a crime.”⁵⁷⁸

It’s painfully apparent that the United States needs a national truth commission to address hundreds of years of enslavement, state-sponsored racism, denial of civil rights and ongoing economic and social disparity suffered by Black Americans which have yet to be addressed. The goal of a truth commission is to hold public hearings to establish the scale and impact of a past injustice, typically involving wide-scale human rights abuses, and make it part of the permanent, unassailable public record.⁵⁷⁹ Commissions such as these officially recognize victims and perpetrators, to move beyond the past, and recognize “wherever there is an ugly, unresolved injustice pulling at the fabric of a society, there is an opportunity to haul it out in public and deal with it through a truth commission.”⁵⁸⁰ Even now, there is no central body or national facility

574. See Sarah Souli, *Does America Need a Truth and Reconciliation Commission?*, POLITICO (Aug. 16, 2020, 7:00 AM), <https://www.politico.com/news/magazine/2020/08/16/does-america-need-a-truth-and-reconciliation-commission-395332> [<https://perma.cc/2YCE-X32T>] (comparing various truth and reconciliation commissions and present issues regarding racism in the United States).

575. *Id.*

576. *Id.*

577. See *id.* (allowing that while the United States does need a truth commission, it would also need the ability to prosecute individuals that would otherwise be protected under qualified immunity).

578. *Id.*

579. Cf. *Truth Commission: South Africa*, *supra* note 273 (utilizing the Truth and Reconciliation Commission created in South Africa to investigate the human rights violations that occurred there during the Apartheid regime from 1960 to 1994 as an example).

580. Ibhawoh, *supra* note 564 (speaking on the importance of Truth Commissions for both victims and perpetrators).

in the United States that researchers, political leaders, or social justice advocates can turn to for guidance, information, and evidence.⁵⁸¹ There are far too many disparate legal and social organizations that overlap in purpose, and creating a central federal level entity would help the researchers, political leaders and social justice advocates understand and compare past commissions to produce better outcomes for future commissions.⁵⁸² That is a role that the ORAR must fill, and the time to make it a reality is now.

CONCLUSION

*Father, father
We don't need to escalate
You see, war is not the answer
For only love can conquer hate
You know we've got to find a way
To bring some lovin' here today
Picket lines and picket signs
Don't punish me with brutality
Talk to me
So you can see
Oh, what's going on.*⁵⁸³

A. Fix Racism. The Continuum Of White Racism Is The Genesis For Reparations

The murder of Black American George Floyd at the hands of a white police officer has become a catalyst for protest throughout America.⁵⁸⁴

581. *See id.* (expressing that having a truth commission would help compare and understand past commissions and consequently help create better outcomes for future commissions).

582. *See id.* (discussing how a central federal level would help commissions function properly based on successes and failures of previous commissions).

583. *See generally* MARVIN GAYE, *What's Going On*, on WHAT'S GOING ON (Motown Records 1971) (referencing the song "What's Going On" by American recording artist, Marvin Gaye).

584. *See* Helier Cheung, *George Floyd Death: Why US Protests Are so Powerful This Time*, BBC NEWS (June 8, 2020), <https://www.bbc.com/news/world-us-canada-52969905> [<https://perma.cc/Y8AH-D9NK>] (reporting on the reasons why this particular tragedy garnered so much support in the United States. The author says that one poll conducted for CNN suggested that 84% of Americans felt peaceful protests in response to police violence against African Americans was justified, while 27% said violent protests were also justified, however support for violent protests was split sharply along political lines).

The murder has also served as a vital moment of national contemplation and introspection to ask ourselves the tough questions we often avoid: How does my own racial bias operate? How can I amplify Black voices? How can I approach the micro and macro aggressions of racism in my workplace, my family, and on the street? Who does my own government work for and against? Only by asking and answering these and similar painful questions sincerely can we bring about tangible change in our own communities, wherever that might be. Marianne Williamson suggests that “the main power of a reparations plan is that it carries moral weight that goes beyond mere economic restitution, because it implies an inherent *mea culpa* – the acknowledgement on the part of one people of a wrong that has been done, a debt that is owed, and a willingness to pay it.”⁵⁸⁵ Williamson further explains that “reparations are not ‘financial assistance;’ they are payment of a debt that has never been paid,” and they thus pave the way for an emotional and psychological healing between Blacks and Whites much needed in the United States.”⁵⁸⁶

At its core, racism in America is a white issue.⁵⁸⁷ White tokenism of Dr. King every January falls far short of the permanent change he demanded. Although venerated to near sainthood today, he was despised by white people for standing against the very same issues that continue to exist today.⁵⁸⁸ “I imagine that one of the reasons people cling to their hates so stubbornly is because they sense, once hate is gone, that they will be forced to deal with pain.”⁵⁸⁹ 1968, Dr. King said the Constitution and the Declaration of Independence were penned by men who

585. Williamson, *supra* note 461.

586. P.R. Lockhart, *Marianne Williamson Presents the 2020 Democratic Primary's First Reparations Plan*, VOX (Aug. 7, 2019, 4:20 PM), <https://www.vox.com/policy-and-politics/2019/8/7/20759067/marianne-williamson-reparations-slavery-2020-primary> [https://perma.cc/8M9B-S84A].

587. See DYSON, *supra* note 52, at 39 (writing directly to white America, his message asks and invites them to learn America's ugly history of racism, to become knowledgeable of Black history, to reject social constructs of race, to quit making excuses for systems of oppression that continue to kill Blacks and understand the terror that accompanies living Black lives in America).

588. See generally James C. Cobb, *Even Though He Is Revered Today, MLK Was Widely Disliked by the American Public When He Was Killed*, SMITHSONIAN MAG. (Apr. 4, 2018), <https://www.smithsonianmag.com/history/why-martin-luther-king-had-75-percent-disapproval-rating-year-he-died-180968664/> [https://perma.cc/L53Y-KD7T] (showing that at the time of his death, Dr. King had a Harris Poll disapproval rating close to 75%. Celebrated and honored now, even while condemning today's activists the same way Dr. King was condemned over 50 years ago).

589. James Baldwin, Letter from a Region in My Mind in the New Yorker (1962).

owned slaves, and consequently, a “nation that got started like that . . . has a lot of repenting to do.”⁵⁹⁰ In 1966, Dr. King stated in Mississippi that America “has a choice. Either you give the Negro his God-given rights and his freedom, or you face the fact of continual social disruption and chaos. America, which will you choose?”⁵⁹¹

The author Michael Dyson mentions that when O.J. Simpson was cleared of the murders of his ex-wife and her friend Ron Goldman, “it was a “racequake” that revealed the fault lines that stretched beneath our national life.”⁵⁹² He explains that O.J.’s trial came on the heels of a tragic acquittal of four white policemen in 1992 for the savage beating of Rodney King in 1991.⁵⁹³ He puts it into context by framing his point in stark terms: “Many whites were outraged and shocked that Simpson could get away with murder, while at the same time Black people cheered and celebrated Simpson’s acquittal like it was Christmas in October.”⁵⁹⁴ He explains in very blunt, easily understood terms for his targeted audience that the point, white America, is this: “No amount of evidence against Simpson could possibly match the far greater evidence of the historical racial injustice which has been perpetrated against Black people in this country.”⁵⁹⁵ The assault of Rodney King at the hands of the LAPD in March 1991 is seen as a grave injustice witnessed worldwide.⁵⁹⁶ The most remarkable event happened during the height of the riots that occurred after the officer’s acquittal charged with his assault.⁵⁹⁷ Despite having sustained severe physical injuries that left him hospitalized, Rodney King simply asked, ““can’t we all get along?”” in a tearful and emotional appeal to Angelenos everywhere.⁵⁹⁸ At its core, there may be no more concise and straightforward illustration

590. See DYSON, *supra* note 52, at 39.

591. *Id.*

592. *Id.* at 57.

593. See *id.* (comparing the effect the O.J. Simpson trial had on the Rodney King case).

594. *Id.* at 58.

595. *Id.* at 62.

596. See generally *id.* at 58 (describing the reaction to the assault of Rodney King and the subsequent acquittal of the officers involved).

597. See *id.* (detailing the social outcry that followed in the wake of the Rodney King beating and trial, then riots after the acquittal).

598. See *id.* at 57–60 (showing that despite the injuries received, the true wish of Mr. King was that of peace and tolerance).

of what reparations, restorative justice, and reconciliation between white and Black Americans are all about.⁵⁹⁹

Pretending not to see race or color is not the way to address racism; it has the opposite effect.⁶⁰⁰ Pretending not to see race is a denial of the historical struggles, challenges, and consequences of being Black in America, and it denies the call and needs for racial justice.⁶⁰¹ If you cannot see race, you cannot see racial responsibility; if you choose not to see race, you choose not to accept the reality of racism and remain blind to the advantages that being white continues to afford white people in the United States while simultaneously ignoring the debilitating effect of more than two centuries of enslavement on Black Americans.⁶⁰²

*B. It's been a long, a long time coming, but I know a change is gonna come, oh yes it will*⁶⁰³

There is a silver lining. The Founding Fathers created a masterful political document that remains unchanged, despite our inability at times to fully live up to the core principles and values enshrined therein.⁶⁰⁴ The framework and legal authority found in the Constitution comes

599. See generally *id.* (speaking to the overall issues involving race and individuals of color in America).

600. See Zach Stafford, *When You Say You 'Don't See Race,' You're Ignoring Racism, Not Helping to Solve It*, GUARDIAN (Jan. 26, 2015, 12:06 PM), <https://www.theguardian.com/commentisfree/2015/jan/26/do-not-see-race-ignoring-racism-not-helping> [<https://perma.cc/DH49-ZRCK>] (“Colorblindness” doesn’t acknowledge the very real ways in which racism has existed and continues to exist, both in individuals and systemically. By professing not to see race, you’re just ignoring racism, not solving it.”).

601. See *id.* (“Racism – both the personal kind and the systemic kind– isn’t necessarily triggered by the visual cue of another person’s skin color. Racism is about the social value we assign to people and their actions based on their physical attributes, and neither blind nor colorblind people avoid that acculturation just because they lack the visual cues.”).

602. See Larry Ferlazzo, *When People Say They Don't See Race, 'I Ask Them If They Don't See Me,'* ED. WEEK (Sept. 17, 2019), <https://www.edweek.org/teaching-learning/opinion-when-people-say-they-dont-see-race-i-ask-them-if-they-dont-see-me/2019/09> [<https://perma.cc/ZE2X-QTZ9>] (“Robin DiAngelo suggests that people often think of racism as individual, prejudiced people using racist terms, denying a person a job because of their race, or otherwise discriminating. But racism also happens when individuals claim to not “see color.”).

603. SAM COOKE, *A Change Is Gonna Come, on AIN'T THAT GOOD NEWS* (RCA Victor 1964) (quoting the lyrics of a song by American singer-songwriter Sam Cooke).

604. See *Founding Values*, DIANA DAVIS SPENCER FOUND. <https://ddsfoundation.org/founding-values/> [<https://perma.cc/5CQH-8UXE>] (“Our Founding Fathers enshrined freedom, limited government, and individual responsibility in the Declaration of Independence and the Constitution. They knew that these values would guide future generations to prosperity and happiness.”)

from the idea that the Rule of Law applies to everyone equally, and it has been amended to reflect that ideal.⁶⁰⁵ The Supreme Court held in *Regents of University of California v. Bakke* that a university's use of racial "quotas" in its admissions process was unconstitutional, but a school's use of "affirmative action" to accept more minority applicants was constitutional in some circumstances.⁶⁰⁶ The Court upheld the Fifth Circuit's decision nearly forty years later by stating that strict scrutiny should be applied to determine the constitutionality of the university's race-sensitive admissions policy.⁶⁰⁷ These cases demonstrate that the Court fully understands its role must be that of an active participant to reconcile, how it can amend, through reparations.⁶⁰⁸ If America is to live up to its belief that all men are indeed created equally, then the law, our American law, must be used to correct historical mistakes.

The full payment for all the adverse effects of the legacy of slavery may be impossible and may never be entirely realized.⁶⁰⁹ The idea of paying for reparations and acknowledging the real need for genuine reconciliation is frightening for white America.⁶¹⁰ This is not a fear that the country might somehow lack the ability to pay for them, as much as it is an acknowledgment of what reparations represent.⁶¹¹ Paying reparations will finally force white America to critically and

605. *See id.* ("To guarantee their political, social, and economic freedoms, Americans must rediscover and apply their founding values.")

606. *See Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978) (ruling that under the Equal Protection Clause of the Fourteenth Amendment, a *public* university may not discriminate based on one's race in its admissions policies, even if doing so will benefit minority groups).

607. *See Fisher v. Univ. of Texas*, 579 U.S. 365 (2016) ("The race-conscious admissions program in use at the time of petitioner's application is lawful under the Equal Protection Clause.")

608. *See Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, (1978); *see also Fisher v. Univ. of Texas*, 136 S.Ct. 2198, 2214 (2016) ("...it remains an enduring challenge to our Nation's education system to reconcile the pursuit of diversity with the constitutional promise of equal treatment and dignity.)

609. *See Horowitz, supra* note 282 ("...to say the legacy of slavery still affects the situation of black people in American society today.")

610. *See generally* Ishena Robinson, *Opposition to the Term Karen Continues Because an Unwillingness to Tackle Racism Continues, Despite the Brief Reckoning in 2020*, ROOT (Jan. 2, 2021, 4:00 PM), <https://www.theroot.com/opposition-to-the-term-karen-continues-because-an-unwil-1845978820> [<https://perma.cc/9N8A-4N5H>] (discussing the cruel discrimination that still takes place today).

611. *See id.* ("Because to acknowledge racism would necessitate people who consider themselves decent to actively work at eradicating it, or at the very least, call it out when they see it.")

honestly assess the value of its most sincerely held beliefs: pride in America's remarkable heritage, remarkable history, values of liberty, values of freedom, and gratification from our standing in the world.⁶¹² America can face the truth to ask what it owes its most vulnerable citizens only by willingly being brutally honest, accepting the conclusions reached, and accepting the answers provided that self-assessment brings.⁶¹³ America can no longer look away and ignore the sins of the past, present, and future.⁶¹⁴ Reparations and reconciliation summons us all to reject the attraction of arrogance and hubris and see America as it really is, the work of fallible humans trying to make a more perfect union and do what we must to "finally get along."⁶¹⁵

612. *See generally id.* (discussing how discrimination does not follow the beliefs America has held for a long time).

613. *See generally id.* (explaining what Americans need to accept and change to reduce racism in America).

614. *See generally id.* (noting that the amount of racism in our society cannot be concealed or hidden).

615. *See generally id.* (discussing how Black people face outrage and offended backlash when they speak of the realities of anti-Blackness).