

# REPARATIONS, RESTITUTION, AND TRANSITIONAL JUSTICE: AMERICAN CHATTEL SLAVERY & ITS AFTERMATH, A MORAL DEBATE WHOSE TIME HAS COME

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## ABSTRACT

The Atlantic trafficking and subsequent enslavement of captive African men, women, and children represents the greatest crime of all time, the theft of humanity and personhood which resulted in a permanent state of dispossession, exile, and homelessness. This tragedy, nevertheless, provided the engine that enabled the rise of the economic empire of countries of the Atlantic world. Subsequent denials of civil rights, land, property, socioeconomic dispossessions, and denigrations drove the rise of racism, xenophobia, and the systemic anti-Black racism of ensuing decades. Thus, the elephant in the room sitting at the center of our history is coming into focus. It looks like this: American slavery happened; it was the very foundation on which the United States and its economy were constructed; and although the formal enslavement of African-descended people was eliminated in 1865, Black people and all Americans, are still living with its consequences. This article offers a critical reading of the movement for reparations as a call for acknowledgment and redress of the litany of civil and human rights violations committed against African descended people in the United States. It proposes that the movement is a call for reckoning, for restitution and transitional justice for crimes

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committed, damages caused, and for the structures required in order for Black people to self-repair psychologically, spiritually, and materially and for the nation as a whole to advance into the 21st century.

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## INTRODUCTION

The involuntary arrival of captive Africans in America was accompanied by the creation of a flurry of laws (such as the infamous Code Noir introduced to Louisiana in 1724) which operated to co-opt their personhood and re-assign them the status of property. These laws resulted in the racial caste system that became embedded in the very fabric of the United States' sociocultural and politico-economic reality. Thus, from the start, colonial powers literally and figuratively created a prison-like environment to contain the African captive within the defined spaces of the plantation economy and its sociopolitical landscape.<sup>1</sup> To Americanize the African, it was necessary to rewrite the Black body through institutionalized practices of violence against it, including scarring, mutilations, distortions, and other destructions. Stripped naked, shackled, and branded, the trafficked African could become disciplined flesh. The re-spatialization of Blackness was accompanied by myriad architectures of confinement, policing, and surveillance.<sup>2</sup> In the public imagination, the

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<sup>1</sup> RASHAD SHABAZZ, SPATIALIZING BLACKNESS: ARCHITECTURES OF CONFINEMENT AND BLACK MASCULINITY IN CHICAGO 4–6 (2015).

<sup>2</sup> *Id.*

enslaved African was rendered hopelessly barbarous, and the enslaved body became an unable and unwilling mass of flesh for use and abuse.

This denial of personhood is evident, for example, in the advertisements for runaway slaves, especially the early ones which have only the barest outline of a human form.<sup>3</sup> The nondescript imagery is associated with the captive's sociopolitical, economic, and legal status as a piece of property. This placed the enslaved African in between racial being and nothingness. Thus, the Black body in America began, as Charles Johnson says, as "a product of imagination, a plastic and malleable thing freighted with ambiguity."<sup>4</sup>

A new ideology of representation developed out of the legal and sociocultural constructs of personhood found within the institution of slavery. Whiteness and the white body were legalized and normalized, in contrast to the "other." The idea of Blackness as a commodity was normalized through a process of Black bodies being measured, priced, valuated, and redefined in biology, anatomy, and physiology.<sup>5</sup> Within the discursive authority of science and law, the Black captive became the pre-eminent signifier of the propertied body, assessed for its economic potential, worth, and ability to produce commerce and reproduce human commodities. This specific construction of the African American as something different from a citizen begins with the framing of the Constitution where, for purposes of apportionment, Blacks were defined as three-fifths of a human being.<sup>6</sup> "The Constitution assumes white men's rights to hold citizenship," as Jon-Christian Suggs suggests, "African Americans, on the other hand, are amendments to the narrative of American legal and social reality and their individual and collective existences must always be argued rather than assumed."<sup>7</sup>

In response to this history of dehumanizing Black people, this article offers a critical reading of the movement for reparations. It proposes that the movement is a call for reckoning, restitution, and transitional

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<sup>3</sup> See Ned Lazaro & Barbara Mathews, *Picturing Slavery: Clothing, Appearance, and New England Advertisements for Run-Away Enslaved Men During the 18th Century*, HISTORIC DEERFIELD (Aug. 14, 2020), <https://www.historic-deerfield.org/blog/2020/8/14/picturing-slavery-clothing-appearance-and-new-england-advertisements-for-run-away-enslaved-men-during-the-18th-century> [https://perma.cc/NGC8-VAFB].

<sup>4</sup> CHARLES JOHNSON, *BEING AND RACE: BLACK WRITING SINCE 1970* 79 (1988).

<sup>5</sup> Stuart Hall, *The Spectacle of the 'Other,'* in REPRESENTATION: CULTURAL REPRESENTATIONS AND SIGNIFYING PRACTICES 243 (Stuart Hall, Jessica Evans & Sean Nixon eds., 2007).

<sup>6</sup> U.S. CONST. art. I, § 2; See generally JON-CHRISTIAN SUGGS, *WHISPERED CONSOLATIONS: LAW AND NARRATIVE IN AFRICAN AMERICAN LIFE* (2000).

<sup>7</sup> SUGGS, *supra* note 6, at 45.

justice for the lasting legacies of slavery and segregation in America, and a call for structures to help Black people self-repair psychologically, economically, and spiritually. This article will first explore the history of the transatlantic trafficking to and enslavement of Africans in America (Part I). It will look at the laws that accompanied and cemented the structures of white supremacy and the theft of personhood and Black wealth, before discussing the lasting economic, psychological, and social effects of slavery and Jim Crow. It will then discuss the reparations movement, including the key concepts and current developments in the national and international scenes (Parts II & III), before concluding (Part IV).

## I. LEGACIES OF SLAVERY: A PRESENT-DAY CONTINUUM OF HARMS

The crimes against humanity that stem from slavery did not end with its abolition. Slavery's legacies can be felt in all parts of contemporary life. We have recently witnessed massive local, national, international, multi-racial, and multi-generational protests in response to the wanton murders of George Floyd, Breonna Taylor, Ahmaud Arbery, Rayshard Brooks, and others.<sup>8</sup> These are expressions of outrage against the brutal executions of young Black men and women by white police officers.<sup>9</sup> However, this all poses an even larger question about the very nature of the African American presence in the United States in general and of their status as citizens specifically. As this Part will show, Euro-American greed and arrogance prompted the theft and trafficking of African people across the Atlantic, and their enslavement, dehumanization, misuse, and abuse that powered the rise of the economic empires of the Atlantic world.<sup>10</sup> In this Part, we will review the process of dehumanizing and dispossessing Black people of their personhood and wealth, consequent links to psychological trauma and racial discrimination.

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<sup>8</sup> *George Floyd: Timeline of Black Deaths and Protests*, BBC (Apr. 22, 2021), <https://www.bbc.com/news/world-us-canada-52905408> [<https://perma.cc/XXG5-TFWG>].

<sup>9</sup> Sean Collins, *The Anger Behind the Protests, Explained in Four Charts*, VOX (June 1, 2020), <https://www.vox.com/2020/5/31/21276004/anger-police-killing-george-floyd-protests> [<https://perma.cc/P2RN-FLQB>].

<sup>10</sup> See Patricia M. Muhammad, *The Trans-Atlantic Slave Trade: Forgotten Crime Against Humanity as Defined by International Law*, 19 AM. U. L. REV. 883 (2003).

A. INSTITUTIONALIZED DISPOSSESSION AND THEFT

It can be argued that the present dispossessed status of African-descended people in the United States and other countries of the Atlantic world began with their commodification. This established a pattern that would become the fundamental method of transferring wealth in the newly-forming capitalist societies. The commodification of Black people facilitated the construction of race and Blackness as absence; thus, whites acquired the possibility of amassing wealth and assets. Blacks, on the other hand, were systematically confined to inferior positions economically, socially, politically, and legally.<sup>11</sup>

The origins of white supremacy are located in the history of slavery. Structural inequity is traceable to the founding days of plantation slavery in the Atlantic, specifically Barbados, where initially there were both European and African bonded laborers.<sup>12</sup> The British strategy was to create a separation between them with the chattelization of Africans and their status of bondage for life; thus, bondsmen could be more effectively controlled based on skin color.<sup>13</sup> The Barbados model was later transported to South Carolina when that colony was founded in 1663, after King Charles II gave the land to eight noblemen (the Lords Proprietors) as a reward for helping restore him to the throne.<sup>14</sup> That meant, eventually, the objectification of the captive African in North America, as had been the case in the Caribbean.<sup>15</sup>

Later theorizations of race, Black inferiority, and white superiority became an accepted social construct, particularly after the famed Bacon's Rebellion in Virginia. Nathaniel Bacon organized his own militia, consisting of white and Black indentured servants and enslaved Black people, and engaged in a power struggle with the Virginia House of Burgesses and the colony's elite.<sup>16</sup> In response to the threat of unified

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<sup>11</sup> Joyce Hope Scott (Special Expert Consultant to the U.N. Hum. Rts. Off. of the High Comm'r), *Accountability, Remedy and Redress for Historical Legacies and Linkages Between Transatlantic Trafficking and Enslavement of Africans, Colonialism & Systemic Racism* (Dec. 14, 2020) (on file with author).

<sup>12</sup> HILARY MCD. BECKLES, *THE FIRST BLACK SLAVE SOCIETY: BRITAIN'S "BARBARITY TIME" IN BARBADOS, 1636-1876* 52–53 (2016).

<sup>13</sup> *Id.* at 21.

<sup>14</sup> *Id.* at 70.

<sup>15</sup> *Id.* at 73.

<sup>16</sup> James Douglas Rice, *Bacon's Rebellion (1676–1677)*, *ENCYCLOPEDIA VA: VA HUMANITIES*, (Dec. 7, 2021), <https://encyclopediavirginia.org/entries/bacons-rebellion-1676-1677> [<https://perma.cc/6WFP-NX6R>].

rebellion, Virginia lawmakers found it expedient to weaponize race by creating legal boundaries between Black and white laborers. As Patrick Anderson, UC San Diego professor of communications and Ethnic Studies, notes:

Colonial elites responded to the growing solidarity by treating whites and Blacks differently in order to inhibit class-consciousness and promote racial separation. . . . The elites' ideas about the "nature" of Blacks came to the fore as they remorselessly degraded people of African descent . . . [and] in the face of growing class-based resistance, the elites used racist justifications to create legal racial distinctions.<sup>17</sup>

By permanently enslaving Virginians of African descent while giving poor white indentured servants and farmers some new rights and status, the ruling elite aimed to separate the two groups and make it less likely that they would unite again in rebellion.<sup>18</sup> Professor Ibram Kendi locates the origin of ideas of Black inferiority in such seminal events as this rebellion and other incidents emerging from the founding of the American nation, and further notes that racism is the brainchild of some of the most brilliant minds of each era.<sup>19</sup> The notion of Black inferiority and white superiority did not cease with the abolition of slavery. In fact, it became a guiding principle justifying systemic racism. Through the social construction of whiteness (and Blackness), there followed the creation of a racial system of social stratification in colonial Virginia (and later other colonies) affected by government policies and institutions.<sup>20</sup>

The creation of a system rooted in white supremacy required the concomitant dehumanization and dispossession or theft of the enslaved African. Consignment of the African captives to the designation of chattel is what made US and Caribbean slavery so inhuman. There was no legal, political, or religious recourse to redress injuries committed against an African identified as chattel. Any right to family—mother, child, siblings—or personal or private rights were effectively stripped away. The chattelized African “was expressly the property of another person to be

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<sup>17</sup> Patrick D. Anderson, *Supporting Caste: The Origins of Racism in Colonial Virginia*, GRAND VALLEY J. HIST., Dec. 2012, at 1, 7.

<sup>18</sup> *Inventing Black and White: Holocaust and Human Behavior*, FACING HIST. & OURSELVES, <https://www.facinghistory.org/holocaust-and-human-behavior/chapter-2/inventing-black-and-white> [<https://perma.cc/94P8-N4QL>].

<sup>19</sup> See IBRAM X. KENDI, *STAMPED FROM THE BEGINNING: THE DEFINITIVE HISTORY OF RACIST IDEAS IN AMERICA* (2016).

<sup>20</sup> Anderson, *supra* note 17 at 1.

held, used, or abused as the owner saw fit.”<sup>21</sup> Laws and protocols were implemented giving enslavers complete ownership of what was treated as mobile flesh.<sup>22</sup> This meant that enslaved people could be snatched away from family or locale and sold with impunity, like any other piece of property that a white master owned.<sup>23</sup> There was no avenue to escape this circularity.

We can read this history of theft in the testimonies of those who were enslaved, such as in the 1773 poem of a young captive African woman who characterizes the institution as the arbitrary destruction of the African family:

I, young in life, by seeming cruel fate  
Was snatch'd from Afric's fancy'd happy seat:  
What pangs excruciating must molest,  
What sorrows labour in my parent's breast?  
Steel'd was that soul and by no misery mov'd  
That from a father seiz'd his babe lov'd:  
Such, such my case. And can I then but pray  
Others may never feel tyrannic sway?<sup>24</sup>

The concept of slavery as the theft and destruction of familial lines is evident in the very material culture that surrounds us. In visiting the spectacular estate of Montpelier—the elegant home of James Madison, fourth President of the United States, Father of the Constitution, and architect of the Bill of Rights—Prof. Hasan Kwame Jeffries notes that it was also a slave labor camp for more than one hundred people whom Madison never freed during his lifetime, nor even after his death.<sup>25</sup> The centerpiece of Montpelier is

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<sup>21</sup> Molefi K. Asante, *Slavery Remembrance Day Memorial Lecture 2007*, NAT'L MUSEUMS LIVERPOOL, <https://www.liverpoolmuseums.org.uk/ideological-origins-of-chattel-slavery-british-world> [<https://perma.cc/BKH9-K6MU>].

<sup>22</sup> BECKLES, *supra* note 12, at 73.

<sup>23</sup> EDWARD BAPTIST, *THE HALF HAS NEVER BEEN TOLD: SLAVERY AND THE MAKING OF AMERICAN CAPITALISM* 32 (2016).

<sup>24</sup> PHILLIS WHEATLEY, *To the Right Honourable William, Earl of Dartmouth, His Majesty's Principal Secretary of State for North America &c.*, in *THE COLLECTED WORKS OF PHILLIS WHEATLEY* 73, 74 (John C. Shields ed., 1988).

<sup>25</sup> Hasan Kwame Jeffries, *Why We Must Confront the Painful Parts of US History*, TEDxOHIOSTATEUNIVERSITY, at 00:56 (Feb. 2020), [https://www.ted.com/talks/hasan\\_kwame\\_jeffries\\_why\\_we\\_must\\_confront\\_the\\_painful\\_parts\\_of\\_us\\_history](https://www.ted.com/talks/hasan_kwame_jeffries_why_we_must_confront_the_painful_parts_of_us_history) [<https://perma.cc/CA8V-YNQ4>]; see also Callie Hopkins, *The Enslaved Household of President James Madison*, WHITE HOUSE HIST. ASS'N

Madison's library "where [Madison] conceptualized the Bill of Rights."<sup>26</sup> Yet if one examines the wall of the cellars of the mansion, one finds the tiny hand prints of enslaved children who made the bricks at the James Madison estate.<sup>27</sup> Thus, the library in which Madison conceived and perfected the Bill of Rights "rests on a foundation of bricks made by the children that he enslaved."<sup>28</sup>

The moral wound in the soul of our nation is nowhere more apparent than in such examples of the wanton destruction of innocence. In essence, the actual physical tortures, kidnappings, and forced separations of children from their mothers and fathers, husbands from wives, and sisters from brothers followed the creation of the documents of freedom and democracy for which the United States is famous. Thus, paradoxically, the fathers of the American revolution, with their enlightenment ideals of liberty and inalienable rights, promoted the theories and appropriated the lofty words and doctrines on which to base their own drive for independence while denying it to the humans they held in captivity. This incongruity "is nothing short of an amazing moral contradiction."<sup>29</sup> At the same time, what the founders were constructing was something uniquely sinister: ritualistic racial bigotry and an oppressive and systematic form of dehumanization of Africans—chattelization.

As William Jamal Richardson notes, from the American Revolution to the era of Jim Crow "the conception of Blackness as property held itself as the dominant framework through which people of African descent were understood."<sup>30</sup> He states that "the structural consequences of this racial structure in terms of social relations can be seen in various social structures that came to define the Antebellum period."<sup>31</sup> Since enslaved Blacks held the status of property, they were part and parcel of the slaveowner's debt portfolio and could be used to pay off

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(Aug. 28, 2019), <https://www.whitehousehistory.org/slavery-in-the-james-madison-white-house> [<https://perma.cc/MXV7-WRCF>].

<sup>26</sup> Jeffries, *supra* note 25, at 01:23.

<sup>27</sup> Asa Herron, *Understanding Hard History at James Madison's Montpelier*, 1870 MAG. (Nov. 17, 2019), <https://1870mag.com/understanding-hard-history-at-james-madisons-montpelier-an-informative-and-eye-opening-fall-break-experience> [<https://perma.cc/49NQ-UMFE>].

<sup>28</sup> Jeffries, *supra* note 25, at 3:45.

<sup>29</sup> Asante, *supra* note 21.

<sup>30</sup> William Jamal Richardson is a sociologist & freelance researcher at Northwestern University. William Jamal Richardson, *The Transition from Blackness as Property to Blackness as Pathogen in the United States* (June 27, 2017), <https://williamjrichardson.com/2017/06/27/the-transition-from-blackness-as-property-to-blackness-as-pathogen-in-the-united-states> [<https://perma.cc/P6NH-JKUD>].

<sup>31</sup> *Id.*

debts, repossessions, liens, and other obligations that the enslavers acquired with banks and insurance companies.<sup>32</sup> The propertied nature of Blackness continued into the industrial age through the slave-like legal codes of convict leasing, apprenticeships, forced sharecropping contracts, and other exploitative laws and protocols.<sup>33</sup> Perceived as being without a soul or rights, the process of chattelization redefined them as real-estate, assets, and units of monetary value.<sup>34</sup>

As Edward Baptist recounts, that value lies at the origins of the great wealth of the new American nation.<sup>35</sup> While the trans-Atlantic phase of slavery receives front billing, Baptist recounts the history of American domestic slavery and reveals the horrors of the “slave labor camps” called plantations, created by those who were forced-marched on a “trail of tears” defined by slave coffles.<sup>36</sup> An account of this chained humanity is recorded in “A Witness to a Kentucky Slave Coffle”:

I looked forward and saw the flag of my country waving. Supposing I was about to meet a military parade, I drove hastily to the side of the road; and having gained the top of the ascent, I discovered, I suppose, about forty Black men, all chained together . . . [each] of them was handcuffed, and they were arranged in rank and file. . . .<sup>37</sup>

That manifestation of US slavery characterized as the domestic phase is one that some contemporary historians have determined is crucial to understanding the overall tapestry of human rights violations committed against African Americans.<sup>38</sup> It is the great missing Black migration. Domestic slavery created a thousand-mile-long river of orphan children and separated families, all of them Black, which stretched across the United States, from Virginia to Louisiana.<sup>39</sup> Historian, Edward Ball, unveiled the fact that more than a million enslaved people were forced to march from states like Virginia, North and South Carolina, and Maryland to the new states of the Mississippi Delta: Louisiana, Mississippi,

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<sup>32</sup> BAPTIST, *supra* note 23, at 254.

<sup>33</sup> See DOUGLAS A. BLACKMON, *SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR TWO* (2009).

<sup>34</sup> BECKLES, *supra* note 12, at 73.

<sup>35</sup> BAPTIST, *supra* note 23, at xx-xxi.

<sup>36</sup> *Id.* at 126.

<sup>37</sup> Tim Talbot, *A Witness to a Kentucky Slave Coffle*, RANDOM THOUGHTS ON HIST. (Dec. 8, 2013, 11:17 AM), <http://randomthoughtsonhistory.blogspot.com/2013/12/a-witness-to-kentucky-slave-coffle.html> [<https://perma.cc/3LGC-HSQV>].

<sup>38</sup> See BAPTIST, *supra* note 23, at xxi; SVEN BECKERT & SETH ROCKMAN, *SLAVERY'S CAPITALISM: A NEW HISTORY OF AMERICAN ECONOMIC DEVELOPMENT* 5 (2018).

<sup>39</sup> See BECKERT & ROCKMAN, *supra* note 38, at 14.

Alabama.<sup>40</sup> The forced separations of families were the results of these brutal, involuntary migrations:

This forced resettlement was 20 times larger than Andrew Jackson’s “Indian removal” campaigns of the 1830s, which gave rise to the original Trail of Tears as it drove tribes of Native Americans out of Georgia, Mississippi, and Alabama. It was bigger than the immigration of Jews into the United States during the 19th century, when some 500,000 arrived from Russia and Eastern Europe. It was bigger than the wagon-train migration to the West, beloved of American lore. This movement lasted longer and grabbed up more people than any other migration in North America before 1900. . . . It gave the Deep South a character it retains to this day; and it changed the [enslaved] themselves, traumatizing [innumerable] families [who were usually separated forever].<sup>41</sup>

The institution of domestic slavery was one driven by violent forced labor.<sup>42</sup> Here was the threat of torture with every footstep: “There was no way thirty-three men hauling one thousand pounds of iron could hide silently in the woods . . . coffle-chains enable Georgia-men to turn feet against hearts, to make enslaved people work directly against their own love of self, children, spouses; of freedom and hope.”<sup>43</sup> The separations and destruction of families became an omnipresent feature of American domestic slavery, which left echoes long after it formerly ended.<sup>44</sup>

Despite slavery being abolished in 1865, it took another century to achieve a legal ban on the Black Codes and Jim Crow segregation which American slavery helped to create.<sup>45</sup> Frederick Douglass lamented what he saw as a tragedy of neglect of a dehumanized people following the Civil War, observing that:

The world has never seen any people turned loose to such destitution as were the four million slaves of the South. . . . They were free, without roofs to cover them, or bread to eat, or land to cultivate, and

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<sup>40</sup> Edward Ball, *Retracing Slavery’s Trail of Tears*, SMITHSONIAN MAG. (Nov. 2015), <https://www.smithsonianmag.com/history/slavery-trail-of-tears-180956968/> [<https://perma.cc/XVT5-M58M>].

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

<sup>42</sup> BAPTIST, *supra* note 23, at 19.

<sup>43</sup> *Id.* at 23.

<sup>44</sup> DeNeen L. Brown, *My Mother Was Sold from Me: After Slavery, the Desperate Search for Loved Ones in ‘Last Seen Ads’*, WASH. POST (Sept. 7, 2017), <https://www.washingtonpost.com/news/retropolis/wp/2017/09/07/my-mother-was-sold-from-me-after-slavery-the-desperate-search-for-loved-ones-in-last-seen-ads> [<https://perma.cc/77NN-8LDN>].

<sup>45</sup> *Black Codes*, HIST. (Jan. 26, 2022), <https://www.history.com/topics/black-history/black-codes> [<https://perma.cc/P3QS-H8AR>].

as a consequence died in such numbers as to awaken the hope of their enemies that they would soon disappear.<sup>46</sup>

Indeed, following that great disaster, white southerners of the former confederacy established a legal apartheid, and newly-freed Blacks were forced into a system which was basically “slavery by another name,” as Douglas Blackmon defined it.<sup>47</sup> Using a loophole in the Thirteenth Amendment to the United States Constitution in reference to conviction of a crime, white southern politicians criminalized Blackness, allowing for the co-optation of Blacks’ civil and human rights through implementation of convict leasing, forced apprenticeships, lynchings, and white terror campaigns.<sup>48</sup>

Even though slavery was technically outlawed in 1865, Black Americans found themselves homeless, with no land, education, money, jobs, or assets, despite the nearly three hundred years of labor, lives, and blood they gave to the nation.<sup>49</sup> Instead of receiving resettlement and rehabilitation, the former captives were further victimized and attacked by white society—North and South. This is not a condition that just plagued America after the Emancipation Proclamation was signed, however. This reality can still be seen today. Slavery’s confiscation of Black lives and possessions created a class of wealthy, powerful white people who were able to take advantage of their power. This fact allowed them to continue to exploit Blacks and carry out their agenda of ongoing, legally sanctioned theft of Black labor under the new guises of convict-lease laws, forced apprenticeships, share-cropping, and other provisions of Jim Crow laws and Black Codes.

## B. PSYCHOLOGICAL AND REPRESENTATIONAL LEGACIES

American slavery’s weaponization of racism gave birth to lasting stereotypes used as justifications for the brutal abuse of a whole group.<sup>50</sup>

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<sup>46</sup> Frederick Douglass, Celebrating the Past, Anticipating the Future (Apr. 14, 1875), in *IN THE WORDS OF FREDERICK DOUGLASS: QUOTATIONS FROM LIBERTY’S CHAMPION*, at 93 (2013).

<sup>47</sup> See BLACKMON, *supra* note 33.

<sup>48</sup> *Convict Lease System*, DIGIT. HIST., [https://www.digitalhistory.uh.edu/disp\\_textbook.cfm?smtid=2&psid=3179](https://www.digitalhistory.uh.edu/disp_textbook.cfm?smtid=2&psid=3179) [https://perma.cc/75J9-X3Q4]; *Southern “Black Codes” of 1865–66*, CONST. RIGHTS FOUND., <https://www.crf-usa.org/brown-v-board-50th-anniversary/southern-black-codes.html> [https://perma.cc/737Q-6KEQ].

<sup>49</sup> See *Southern “Black Codes” of 1865–66*, *supra* note 48.

<sup>50</sup> Laura Green, *Negative Racial Stereotypes and Their Effect on Attitudes Toward African-Americans*, FERRIS STATE UNIV.: JIM CROW MUSEUM,

These still dominate representations of Black people in America today. Images of brutal Black men are justifications for lasting violence against Black people.<sup>51</sup> Donald Bogle, American film historian, gives a sweeping review of the history of Black stereotypes in American film in his seminal study, covering performances from Hattie McDaniels in *Gone with the Wind* to Morgan Freeman in *Driving Miss Daisy*.<sup>52</sup> Angela Nelson continues Bogle's critique of cinema with a critique of African Americans in primetime television programming. Beginning with her discussion of the *Amos N Andy* shows of the 1950s, Nelson describes the stock images of Black men as buffoons and Black women as "cackling, screaming shrews."<sup>53</sup> She further identifies a number of stereotypes that characterize the principal roles of Black people on primetime television from 1948 through the late twentieth century such as the Sambo, the Mammy, Zip Coon (the coon), all legacies of the nineteenth century minstrel shows where white men corked up in black face performed degrading representations of Black people (men principally).<sup>54</sup> Nelson convincingly delineates a litany of repeated stereotypical images up to and including contemporary sitcoms like *Everybody Hates Chris* (2006 – present) and *Tyler Perry's House of Payne* (2007 – present).<sup>55</sup>

One has only to engage in a cursory review of contemporary television and film representations of Black people in sitcoms, news reports, and movies to locate Bogle's and Nelson's dysfunctional stereotypes on the American landscape populated with criminals, buffoons, and women and girls of questionable character.<sup>56</sup> In his review of Black representation in film and television, Dr. David Childs also gives an analysis of late twentieth and twenty-first century media representations of African Americans.<sup>57</sup> He points out that series like

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<https://www.ferris.edu/htmls/news/jimcrow/links/essays/vcu.htm> [https://perma.cc/NS3X-WKPQ].

<sup>51</sup> For more on the specific violence experienced by Black men, see TOMMY CURRY, *THE MAN-NOT: CLASS, GENRE AND THE DILEMMAS OF BLACK MANHOOD* (2017).

<sup>52</sup> DONALD BOGLE, *TOMS, COONS, MULATTOES, MAMMIES, & BUCKS: AN INTERPRETIVE HISTORY OF BLACKS IN AMERICAN FILMS* 88, 314 (5th ed. 2016).

<sup>53</sup> Angela Nelson, *African American Stereotypes in Prime-time Television: 1948-2007*, in 3 *AFRICAN AMERICANS AND POPULAR CULTURE* at 194 (Todd Boyd ed., 2008).

<sup>54</sup> *Id.* at 195–196.

<sup>55</sup> Nelson, *supra* note 53, at 209.

<sup>56</sup> Robert Staples & Terry Jones, *Culture, Ideology and Black Television Images*, 16 *BLACK SCHOLAR: J. BLACK STUD. & RSCH.* 10, 10–11 (1985).

<sup>57</sup> David Childs, *Representations of African American Characters on Television and Film*, *DEMOCRACY & ME* (Feb. 8, 2021), <https://www.democracyandme.org/representations-of-african-american-characters-on-television-and-film/> [https://perma.cc/RB2P-L3UJ].

HBO's *The Wire* "continued the Black reality street drama popularized in the 1990s, [and that though they received critical acclaim], *Boyz n the Hood* and *Menace II Society* both focus on inner-city Los Angeles, featuring the familiar theme of the deviant, drug-dealing Black male."<sup>58</sup> Although some changes have occurred in portrayals of Black people in film and television, many stereotypes still persist. Films such as *The Help* and *Django Unchained* were very popular at the box office, yet they still portray African Americans with familiar caricatures from decades ago.<sup>59</sup> *The Help* is overpopulated with mammy figures and *Django Unchained* depicts the recurring Uncle Tom and Black Buck of a century ago.<sup>60</sup>

Anti-Black racism and Afrophobia are the results of American slavery and the transoceanic trafficking in captive Africans. The difficulty that the nation faces is that it cannot move on from its past because its past, no matter how horrid it was, is what resulted in the nation's prosperity and economic dominance. When the Civil War ended, southerners of the former confederacy could not bear to see the people whom they had for centuries oppressed and used as a means to an end legally become their equal, and so began the era of segregation.<sup>61</sup>

Over the decades of industrialization, opportunities for African Americans have not increased.<sup>62</sup> "Their disadvantages simply morphed. Slavery's violent theft was replaced by [more theft] convict leasing, sharecropping and, after a heroic civil rights struggle between 1863 and 1873 disenfranchisement and legal discrimination, or Jim Crow."<sup>63</sup>

## II. A MORAL RECKONING – THE MOVEMENT FOR REPARATIONS

Theories of reparation or repairing for harm done—are ancient concepts even though they have recently resurfaced in public debates over the legacies of the transoceanic trafficking and subsequent enslavement of captive Africans.<sup>64</sup> Today's debate on reparations and transitional justice

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<sup>58</sup> *Id.*

<sup>59</sup> BOGLE, *supra* note 52, at 464–65.

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

<sup>61</sup> See BLACKMON, *supra* note 33.

<sup>62</sup> See Calvin Schermerhorn, *Why the Racial Wealth Gap Persists, More Than 150 Years After Emancipation*, WASH. POST (June 19, 2019), <https://www.washingtonpost.com/outlook/2019/06/19/why-racial-wealth-gap-persists-more-than-years-after-emancipation/> [<https://perma.cc/T423-K7W2>].

<sup>63</sup> *Id.*

<sup>64</sup> See Janna Thompson, *Historical Injustice and Reparation: Justifying Claims of Descendants*, 112 ETHICS 114, 115, 118 (2001).

for slavery, and the litany of civil and human rights violations committed historically (and currently) against African-descended people in the United States, Europe, and both North and South America, is a call for a reckoning for crimes committed, damages caused, and structures required to redress the lingering ills provoked by slavery's systematic dehumanization and theft. In this Part, we will look at the historical failure to provide reparations after 1865, before looking at the emergence of the reparations movement.

The need for reparations can be traced back to the post-abolition period. On January 16, 1865, Union Army General William Sherman issued Special Field Order No. 15, which ordered the redistribution of roughly 400,000 acres of land along the coastline of South Carolina, Florida, and Georgia to Black families in 40-acre plots.<sup>65</sup> He also authorized the Army to loan mules to them.<sup>66</sup> This action was in accord with President Abraham Lincoln's push for the creation of the Bureau of Refugees, Freedmen, and Abandoned Lands, which was established on March 3, 1865.<sup>67</sup> However, after his successor, President Andrew Johnson, overturned Sherman's order and later the secessionists' land was returned to them, to those who were former slaveowners and traitors to their own country.<sup>68</sup> In the process, there were no reparations, and no restorative justice provided to formerly-enslaved Blacks and their children. Therefore, the promise of Black restitution remains unfulfilled. Psychological and spiritual healing remains an issue plus trillions of dollars and millions of acres of illegally-seized land and property in reparations are due. It remains clear today that the government and the corporate and individual beneficiaries of the production of those who were imprisoned in the institution of slavery and subsequent dispossession owe this restitution.

The US government failed to redress the crimes of slavery in 1865 when it refused to follow through on promises of land, resettlement, and other propositions from the Freedmen's Bureau for formerly enslaved

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<sup>65</sup> (1865) *General William T. Sherman's Special Field Order No. 15*, BLACK PAST (Sept. 29, 2008), <https://www.blackpast.org/african-american-history/special-field-orders-no-15/> [<https://perma.cc/GC6C-UA25>].

<sup>66</sup> *Id.*

<sup>67</sup> *This Day in History: March 03*, HIST. (Mar. 2, 2021), <https://www.history.com/this-day-in-history/freedmans-bureau-created> [<https://perma.cc/P5SN-H9NX>].

<sup>68</sup> Rick Beard, *A Promise Betrayed: Reconstruction Policies Prevented Freedmen from Realizing the American Dream*, HISTORYNET (June, 2017), <https://www.historynet.com/a-promise-betrayed.htm> [<https://perma.cc/EV7D-JUE6>].

Black Americans.<sup>69</sup> Racism and acts of Black dispossession are at the base of Black economic disadvantage today. However, there were moments in United States history when a course of action could have been set in motion to change that trajectory of inequity. William Darity and A. Kirsten Mullen point out some specific occasions where opportunities for restorative justice could have been implemented:

The formation of the republic provided a critical moment when blacks might have been granted freedom and admitted to full citizenship. The Civil War and the Reconstruction era each offered openings to produce a true democracy thoroughly inclusive of black Americans. Had the New Deal project and the GI Bill fully included blacks, the nation would have widened the window of opportunity to achieve an equitable future. Passage of civil rights legislation in the 1960s might have unlocked the door for America to eradicate racism. However, at none of these forks was the path to full justice taken.<sup>70</sup>

Today, over a century and a half later, there is H.R. 40, the House Bill for a national commission to study the issue of reparations.<sup>71</sup> The question is—will the nation seize this occasion to begin a process of restitution for the co-optation of Black humanity? People of African descent suffered from the theft of their humanity, labor, and creativity in the United States for many generations while others got wealthy at their expense.<sup>72</sup> Furthermore, for well over two centuries after official slavery, they were re-enslaved for nearly 100 years—three generations or more.<sup>73</sup> In addition, they were consistently denied opportunities to participate in programs, such as the government’s 1862 Homestead Act, which rendered millions of acres of land to white families, and New Deal programs that facilitated the making of a white middle class.<sup>74</sup> For the most part, these initiatives were not available to African Americans because of Black Codes and segregationist practices.<sup>75</sup>

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<sup>69</sup> *Freedmen’s Bureau*, HIST. (June 1, 2010), <https://www.history.com/topics/black-history/freedmens-bureau> [<https://perma.cc/EFE4-SHK3>].

<sup>70</sup> WILLIAM A. DARITY, JR. & A. KIRSTEN MULLEN, *FROM HERE TO EQUALITY: REPARATION FOR BLACK AMERICANS IN THE TWENTY-FIRST CENTURY* 1 (2020).

<sup>71</sup> Commission to Study and Develop Reparation Proposals for African Americans Act, H.R. 40, 117th Cong. (2021).

<sup>72</sup> See BLACKMON, *supra* note 33, at 120–22.

<sup>73</sup> *Id.* at 7–10.

<sup>74</sup> Keri Leigh Merritt, *Land and the Roots of African-American Poverty*, AEON (Mar. 11, 2016), <https://aeon.co/ideas/land-and-the-roots-of-african-american-poverty> [<https://perma.cc/BAA9-CLKS>].

<sup>75</sup> *See id.*

Such discriminatory denials have not disappeared in the twenty-first century as Black Americans are still criminalized and denied opportunities to acquire wealth through land acquisition and home ownership or to elevate their standard of living through quality education, well-paying jobs, and businesses. Even in the numerous cases when Black individuals and communities prospered of their own accord, they were often attacked and destroyed by white mob violence.<sup>76</sup> Some of these communities were Ocoee, Florida in 1920;<sup>77</sup> Tulsa, Oklahoma massacre and destruction of 1921;<sup>78</sup> Colfax, Louisiana, 1873; Wilmington, North Carolina, 1898; Atlanta of 1906, and the Elaine, Arkansas massacres of 1919.<sup>79</sup> The point of H.R. 40 is for a mandated commission to fill in the details of how to work out the problem of establishing justice. To that end, H.R. 40's operative word is restitution—to validate the Constitution for descendants of those Black enslaved dispossessed people.<sup>80</sup>

Petitions for atonement, restitution, and repair for enslavement, genocide, colonialism, disenfranchisement, and multiple other forms of racial discrimination and exploitation of Black people, have surged to the forefront of antiracist advocacy in the global community.<sup>81</sup> “Indeed, in light of the expansion of international juridical forums and precedents, the recent rise in reparations debates is”<sup>82</sup> linked to larger issues of decolonization.<sup>83</sup> “The philosophical and tactical brilliance of reparations lies in its synthesis of moral principles and political economy.”<sup>84</sup> Such an

<sup>76</sup> Channon Hodge, Breeanna Hare, Tami Luhby, Elias Goodstein, Priya Krishnakumar, Nadia Lancy, Toby Lyles, Amy Roberts & Clint Alwahab, *Burned from the Land: How 60 Years of Racial Violence Shaped America*, CNN (May 30, 2021), <https://www.cnn.com/interactive/2021/05/us/whitewashing-of-america-racism/> [https://perma.cc/FJ25-TGHR].

<sup>77</sup> November 2, 1920: The Ocoee Massacre, ZINN EDUC. PROJECT, <https://www.zinnedproject.org/news/tdih/ocoee-massacre/> [https://perma.cc/D5MK-ELS9].

<sup>78</sup> Hodge et al., *supra* note 76.

<sup>79</sup> Clay Cane, *Not Just Tulsa: Race Massacres That Devastated Black Communities in Rosewood, Atlanta, and Other American Cities*, BET (May 31, 2021), <https://www.bet.com/article/fqn50c/five-other-race-massacres-that-devastated-black-america> [https://perma.cc/B93U-R3H8].

<sup>80</sup> See Sheila Jackson Lee, *H.R. 40 is Not a Symbolic Act. It's a Path to Restorative Justice*, ACLU: NEWS & COMMENT. (May 22, 2020), <https://www.aclu.org/news/racial-justice/h-r-40-is-not-a-symbolic-act-its-a-path-to-restorative-justice/> [https://perma.cc/U5AX-XECX].

<sup>81</sup> *The Global Reparations Movement*, CARICOM REPARATIONS COMM'N, <https://caricomreparations.org/the-global-reparations-movement/> [https://perma.cc/Y8KZ-5J5V]; Martha Biondi, *The Rise of the Reparations Movement*, 87 RADICAL HIST. REV. 5, 5 (2003).

<sup>82</sup> Biondi, *supra* note 81, at 5.

<sup>83</sup> *The Global Reparations Movement*, *supra* note 81.

<sup>84</sup> Biondi, *supra* note 81, at 5.

approach is a bold step toward a global reparations movement. This movement was launched in 1993 at the Abuja Conference for African Enslavement, Colonization, and Neo-colonization sponsored by the Organization of African Unity (OAU) and its Reparations Commission.<sup>85</sup> The OAU assembly was followed by the United Nations' World Conference on Racism, Racial Discrimination, and Xenophobia.<sup>86</sup> The outcome of this conference was the Durban Declaration, a statement that slavery and the slave trade are "crimes against humanity" and that "Africans and people of African descent, Asians and people of Asian descent and indigenous peoples were victims of these acts and continue to be victims of their consequences."<sup>87</sup>

### III. REPARATIONS, REPAIR AND RESTITUTION

As a nation of laws and sociocultural protocols, we hold to the concept of restitution and atonement for crimes committed, especially theft, yet the suggestion is that

the impact of race and slavery is so deep that no adequate reparation can ever be made. Yet if we want to find some semblance of healing, we must wade into this topic. Reparations would involve acknowledging the destructive power of slavery and how much of white wealth was built on slave labor.<sup>88</sup>

Darrick Hamilton, professor and founding director of the Institute for the Study of Race, Stratification and Political Economy at The New School of Social Research, notes that the current state of United States race relations profoundly impacts discussions of reparations because of the nation's unique history: "From our founding fabric we [Americans] have based our political and economic institutions on chattel slavery . . . [w]hich makes our institutions not only pernicious but structurally entrenched [in inequalities]."<sup>89</sup> However, the movement for reparations today follows the

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<sup>85</sup> Org. of African Unity [OAU], *The Abuja Proclamation* (Apr. 27–29, 1993), <http://ncobra.org/resources/pdf/TheAbujaProclamation.pdf> [<https://perma.cc/XM5T-PTF5>].

<sup>86</sup> World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Report of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, U.N. Doc. A/CONF.189/12 (Aug. 31–Sept. 8, 2001).

<sup>87</sup> *Id.*

<sup>88</sup> Nibs Stroupe, *Reparations is a Spiritual Issue*, THE CHRISTIAN CENTURY (Sept. 10, 2019), <https://www.christiancentury.org/article/opinion/reparations-spiritual-issue> [<https://perma.cc/HEH2-3N5U>].

<sup>89</sup> *Should Black Americans Get Slavery Reparations?*, BBC (Mar. 21, 2019), <https://www.bbc.com/news/world-us-canada-47643630> [<https://perma.cc/MJE6-5QAG>].

legacies of these previous initiatives and underscores the historical failure of the former slave-trading nations and enslavers to provide restitution and repair after abolition for harm done to people whose lives, liberty, and assets were stolen. Instead, slaveowners were compensated for the loss of their workforce, while slavery gave way to new systems of oppression and exploitation that continued to benefit former slaveholders and their allies long after the abolition decrees.<sup>90</sup> Therefore, acknowledgement of the criminal nature of slavery, as well as discussions of reparations, remains politically taboo.

#### A. THE TIME HAS NOT PASSED FOR REPARATIONS AND PSYCHOLOGICAL HEALING

Reparations and restorative justice are initiatives for reclaiming the very soul of the United States and the rectification of the injustice which has been the defining signifier of Black people's experience since their arrival in the Americas. Indeed, reparations are a long-overdue gesture of atonement and repair for chattel slavery and its legacies—the ongoing racial marginalization, sociopolitical oppression, economic dispossession, and dehumanization of Black bodies and souls. Enslaved Blacks suffered crimes against humanity during slavery and making reparations to them would have been the legally and morally right thing to do. As for the argument today about the right of inheritance of their heirs, Ta-Nehisi Coates<sup>91</sup> and other proponents of reparative justice have argued that restitution is not limited by the length of time between benefactor and heir.<sup>92</sup> Reparations were due but were never paid. Dr. Martin Luther King, Jr. noted it in his “I Have a Dream” Speech when he said to the nation: “It is obvious today that America has defaulted on this promissory note insofar as her citizens of color are concerned. Instead of honoring this

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<sup>90</sup> BECKLES, *supra* note 12.

<sup>91</sup> Ta-Nehisi Coates is a journalist and author of the New York Times bestseller *Between the World and Me*, winner of the 2015 National Book Award for Nonfiction, a MacArthur Fellow, and well-known advocate of social justice. *Biography*, TA-NEHISI COATES, <https://ta-nehisicoates.com/about/> [<https://perma.cc/5G4D-97LH>]. His seminal article, *The Case for Reparations*, published in the June 2014 edition of *The Atlantic*, sparked renewed attention to this centuries-old issue. *Ta-Nehisi Coates Revisits the Case for Reparations*, NEW YORKER, <https://www.newyorker.com/news/the-new-yorker-interview/ta-nehisi-coates-revisits-the-case-for-reparations> [<https://perma.cc/2RWW-8DUE>].

<sup>92</sup> See Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/> [<https://perma.cc/K59P-VXSS>].

sacred obligation, America has given the Negro people a bad check, a check which has come back marked insufficient funds.”<sup>93</sup> Instead, as Bernard Boxill<sup>94</sup> claims, only white descendants of the previous generation profited from the assets left behind. His suggestion is challenging, indeed.

[T]he slaves had an indisputable moral right to the products of their labour; these products were stolen by the slave masters who ultimately passed them on to their descendants; the slaves presumably have conferred their rights of ownership to the products of their labour to their descendants; thus, the descendants of slave masters are in possession of wealth to which the descendants of slaves have rights; hence, the descendants of slave masters must return this wealth to the descendants of slaves with a concession that they were not rightfully in possession of it.<sup>95</sup>

In effect, chattel slavery in the United States is responsible for the dehumanization of Black people, regardless of whether or not they are direct descendants of Africans enslaved in the United States. Slavery’s legacy spawned racial terror, state-sanctioned segregation, and destruction of Black people’s land, property, businesses, and homes in the Jim Crow era and beyond through housing discrimination, redlining, and de jure dispossessions.<sup>96</sup> All of these represent ongoing harms of slavery that have yet to be remediated through some form of restitution.

## B. A NEW OPPORTUNITY GIVES HOPE FOR REPAIR TODAY

Some would argue that with the era of slavery and subsequent Black Codes, Jim Crow segregation, and concentrated Black dispossession having ended so long ago that it is now too late to debate the subject of reparations. Some opponents of reparations point out that neither the

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<sup>93</sup> Martin Luther King, Jr., *I Have a Dream*, AM. RHETORIC (Aug. 28, 1963), <https://www.americanrhetoric.com/speeches/mlkhaveadream.htm> [https://perma.cc/58L8-RXVH].

<sup>94</sup> Bernard Boxill is a philosopher and distinguished professor emeritus of philosophy at the University of North Carolina Chapel Hill. His writings on ethics and political philosophy are some of the most prominent in the field. *Bernard Boxill*, UNIV. N.C. CHAPEL HILL, <https://philosophy.unc.edu/people/bernard-boxill/> [https://perma.cc/W28E-F6T2].

<sup>95</sup> Bernard R. Boxill, *The Morality of Reparation*, 2 SOC. THEORY & PRAC. 113, 120 (1972), <https://www.jstor.org/stable/23556672> [https://perma.cc/326C-8N94].

<sup>96</sup> RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* 39–57 (2018).

slaveowners nor those who were enslaved are alive today.<sup>97</sup> So, what have we to do with reparations for that dynamic? The immediate response to that is this: racism, white supremacy, theft, destruction, and dispossession of Black life and property have also outlived those who created it. Nevertheless, we are dealing with all of this today. It is logically we who must redeem this national default on humanity. Ibram Kendi argues that even though the institution of slavery has been eliminated, the belief system it created is alive and well.<sup>98</sup>

The argument that we are now too far removed from slavery and segregation to discuss reparations is a piece of circularity par excellence. During the period of slavery and unceasingly since the 18th century, Black people have stated the case for restitution in petitions, correspondences, pamphlets, public speeches, slave narratives, marches/protests, and judicial claims—advocating in the languages of the perpetrators.<sup>99</sup> One of the most famous of these is Belinda Sutton’s 1789 petition for reparations submitted to the Massachusetts General Court.<sup>100</sup> Sutton’s petition was followed a century later by Callie House’s 1897 campaign with the National Ex-Slave Mutual Relief, Bounty, and Pension Association.<sup>101</sup> Long before H.R. 40, there was the bill introduced into the U.S. Senate in 1894 asking that direct payments of up to \$500 be granted to all ex-slaves plus monthly pensions ranging from four to fifteen dollars.<sup>102</sup> This and other bills like it never made it out of congressional committees.<sup>103</sup>

A study of the ex-slave pension movement identifies several pension associations founded by ex-slaves all existing in the late nineteenth century. These included “the National Ex-Slave Pension Club Association of the United States (Vaughan’s Justice Party); the Ex-Slave Petitioners’ Assembly; the Great National Ex-Slave Union:

<sup>97</sup> See David Horowitz, *Ten Reasons Why Reparations for Slavery is a Bad Idea for Blacks – and Racist Too*, 31 BLACK SCHOLAR 48, 48 (2001).

<sup>98</sup> KENDI, *supra* note 19, at 503–10.

<sup>99</sup> *The Making of African American Identity: Community-Petitions*, NAT’L HUMANITIES CTR., <http://nationalhumanitiescenter.org/pds/maai/community/text4/text4read.htm> [<https://perma.cc/YBG9-NGHN>].

<sup>100</sup> Sutton, an ex-slave of Issac Royall, delivered a petition to the Massachusetts General Court for reparations for her enslavement. Belinda Sutton, *Petition to the Massachusetts General Court* (Feb. 14, 1783), <https://royallhouse.org/belinda-suttons-1783-petition-full-text/> [<https://perma.cc/EF8W-UZ48>].

<sup>101</sup> See MARY FRANCES BERRY, *MY FACE IS BLACK IS TRUE: CALLIE HOUSE AND THE STRUGGLE FOR EX-SLAVE REPARATIONS* 69–72, 82 (1st ed. 2005).

<sup>102</sup> *Reparations for Slavery Reading*, CONST. RTS. FOUND., <https://www.crf-usa.org/brown-v-board-50th-anniversary/reparations-for-slavery-reading.html> [<https://perma.cc/U7YA-S8PC>].

<sup>103</sup> *Id.*

Congressional, Legislative, and Pension Association of the U.S.A.; the Ex-Slave Pension Association; [and] the Ex Slave Department Industrial Association of America.”<sup>104</sup> Perry points out that with the exception of the National Ex-Slave Mutual Relief, Bounty, and Pension Association of the United States of America (MRB&PA), not much research exists about the others.<sup>105</sup> This movement seems to have failed essentially as a result of persecution by federal agencies.<sup>106</sup> “The Bureau of Pensions, the Post Office Department, and the Department of Justice worked collectively in the late 1890s and into the early 20th century” to undermine the work of these reparative justice groups.<sup>107</sup> The Post Office, in particular, “used its extensive antifraud powers against the movement, issuing fraud orders to organizations and officers . . . forbidding the delivery of all mail . . . and the payment of money orders.”<sup>108</sup> It intercepted mail and returned it, labeled it “fraudulent, or simply withheld [it] from the intended recipients. The fraud order and obstruction of mail proceeded even though the Post Office had no concrete evidence that the association had acted illegally.”<sup>109</sup>

The fact that demands for reparations were deliberately ignored and sabotaged for so long in the past cannot logically form the basis of a denial in the present. Indeed, the call for reparations for crimes against Black humanity continues to evolve.<sup>110</sup> Not only has the movement for reparations and restorative justice been ongoing at the grassroots level, but it also has a long history in international courts and international law. Jenny Martinez, human rights lawyer, professor of law, and current Dean of the Stanford Law School, explains that despite the fact that most people think of international courts as arising with the Nuremberg trials, “more than a century before Nuremberg, international courts in Sierra Leone, Cuba, Brazil, and other places around the Atlantic heard cases related to the slave trade, the original ‘crime against humanity.’”<sup>111</sup> “These slave trade courts were the first international human rights courts and were

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<sup>104</sup> Miranda Booker Perry, *No Pensions for Ex-Slaves: How Federal Agencies Suppressed Movement to Aid Freedpeople*, PROLOGUE MAG., Summer 2010.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> ANA LUCIA ARAUJO, *REPARATIONS FOR SLAVERY AND THE SLAVE TRADE: A TRANSNATIONAL AND COMPARATIVE HISTORY* (2017).

<sup>111</sup> JENNY S. MARTINEZ, *THE SLAVE TRADE AND THE ORIGINS OF INTERNATIONAL HUMAN RIGHTS LAW* 9 (2011).

called ‘Mixed Commissions’ because they consisted of judges from different countries,” historian Jenny Martinez explains.<sup>112</sup> These slave trade tribunals sat on a “permanent, continuing basis, and they applied international law . . . explicitly aimed at promoting humanitarian objectives.”<sup>113</sup> As a matter of global concern, reparations are a dilemma to which the United States and every nation that systematically enriched itself by stealing Black people’s humanity now finds itself exposed. Indeed, instead of going away, reparatory justice movements will likely continue to reinforce each other across the African diaspora and the world. W.E.B. Du Bois observed many decades ago that slavery was that original sin that left an indelible imprint on our nation’s very claims to civility.<sup>114</sup>

### C. SPIRITUAL RESTORATION

In assessing the nature of the harm done to the enslaved, Black writers in the diaspora tradition of modernism challenge the standard narrative of reparations as just a monetary matter, insisting on the importance of psychological and spiritual healing, and the role of “rememory.”<sup>115</sup> Rememory, as defined by Toni Morrison’s character, Sethe, in the novel *Beloved*, is the relocation of the mind’s thought-pictures of the past “out there,” in the physical world. It is the concrete and corporeal resurrection of the past in the present, as if time did not exist.<sup>116</sup>

Loss of culture, history, names, and spiritual identity as a result of the brutality of historical enslavement requires reconnection to knowledge bases that are a vital remedy for mending the fractured Black consciousness. Writing about “The Spirit of Reparation,” Prof. David Hall<sup>117</sup> points out the profound reality that “[w]hen this nation chose in 1865 and again in 1867 not to provide reparations to newly freed Africans, it not only postponed an appropriate legal remedy, it also placed a psycho-spiritual chain around the heart and soul of this nation.”<sup>118</sup>

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<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> W.E.B. DU BOIS, JOHN BROWN: A BIOGRAPHY OF AMERICAN ABOLITIONIST (2014).

<sup>115</sup> TONI MORRISON, *BELOVED* 43 (Vintage Books 1st ed. 2004) (1987).

<sup>116</sup> *See id.* at 226.

<sup>117</sup> Dr. David Hall is President and Distinguished Professor of Spirituality and Professionalism at the University of the Virgin Islands. He is well-known for his publications on the U.S. Constitution and race; legal education, and social justice; the intersection of law and spirituality; and social justice leadership. *Hall, David, SJD*, UVI, <https://www.uvi.edu/directory/profiles/administrators/hall-david.aspx> [<https://perma.cc/C56D-6WWF>].

<sup>118</sup> David Hall, *The Spirit of Reparation*, 24 B.C. THIRD WORLD L.J. 1, 9 (2004).

Hall goes on to underscore the fact that while some progress was made with the Civil Rights movement, the nation remains:

trapped in spiritual chains of indifference . . . [and] guilt . . . [and] each generation [since] has learned to live with these spiritual chains, to cover them up, to rationalize them away, or to deny that they even exist . . . [t]o develop theories of [Black] inferiority to justify slavery and segregation.<sup>119</sup>

However, these denials and lapses of memory have not erased that fact from the soul of Black people nor this nation. It is still mired in the spiritual destruction accruing from the Atlantic trafficking in stolen Africans, slavery, subjugation, Black lynching, rape, and murder with impunity. This original transgression of Blacks' human rights is conveniently erased from public memory, but it is a truth which calls for redress.<sup>120</sup>

Ancillary to the above articulations, the contemporary term "rematriation" argues also for an agenda which serves to expand the notion of reparative collectivities, communities, and ecologies. Rematriation is the process by which the descendants of those who were forcibly displaced from Africa can return culturally and spiritually to African knowledge sources.<sup>121</sup> This notion acknowledges not only that slavery was theft of the body and its creations but also, and equally important, that enslavement severed the African captive from metaphysical knowledge and connections that inform the very foundation of his human identity. Rematriation, in this sense, is clearly an important issue in calls for reparation and transitional justice. It addresses one of the most brutal and enduring wrongs of the enslavement and colonization experiment: the psychological and spiritual damage caused to the sensibilities of African-descended people. Rematriation is also seen as restoring a process disrupted by conquest, i.e., restoring liberation.<sup>122</sup> As a feature of reparations and restorative justice, it is a journey to reclaim ancestral knowledge lost to centuries of brutal enslavement, dispossession, confiscation of natural resources, miseducation, imposed religions, and

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<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at 1, 7.

<sup>121</sup> See *Rematriation Resource Guide*, SOGOREA TE' LAND TRUST (July 12, 2021), <https://sogoreate-landtrust.org/wp-content/uploads/2021/07/Rematriation-Resource-Guide.pdf> [<https://perma.cc/PA4T-JLX2>]; see also Raymond A. Winbush, *Reparations for Africans: A Brief Overview of their History*, COMMUNIQUE SPECIAL SECTION - REPARATIONS: REPAIRING THE PSYCH. HARM? (Am. Psych. Ass'n, Washington, D.C.), Jan. 2005, at iv, vii.

<sup>122</sup> *Rematriation Resource Guide*, *supra* note 121; Yasmin Hernandez Quirindongo, *Rematriation, REMATRIATING BORIKÉN* (June 26, 2019), <https://rematriatingboriken.com/rematriation> [<https://perma.cc/PCS4-DC93>].

destructive epistemological violence.<sup>123</sup> Rematriation ultimately is a reclaiming of the spirits on a collective journey to liberation.<sup>124</sup> Such a focus is in strict opposition to racism, dehumanization, and dispossession of Africans and African-descended people.

Arguing that the trans-Atlantic Slave Trade caused untold psychological and spiritual damage to African people, Ray Winbush comments on the inadequacy of language to capture the depths of that loss:

Words such as “Black Holocaust” are inadequate in their attempt to describe what happened (is happening) to Africans whose ancestors were victims of enslavement, colonialism, cultural theft, and exploitation. In an attempt to describe this horrific experience, Marimba Ani, author of *Let the Circle Be Unbroken* offers the Kiswahili term *Maafa* to emphasize the continuing impact of enslavement on African people’s thought patterns and behavior. Joyce DeGruy Leary coined the phrase “Post Traumatic Slave Syndrome” which also describes this impact. . . . In this sense, the struggle for reparations is not only economic but psychological as well.<sup>125</sup>

Thus, rematriation prioritizes the psychological and spiritual damage of slavery, racism, and violent oppression. Identity-formation, community-building, and cultural re-appropriation and revalorization are seen as forms of repair aimed towards addressing issues of restoration, healing, and justice through promotion of cultural pride and ancestral exhortation. These are examples of rematriation and, as such, acts of broadening the definition of reparation and transitional justice. Its focus is on demonstrating how the work of repair/reparations must be holistic and ongoing, enabling renewal and augmentation with each generation.

Many in the United States today believe that we now live in a post-racial society; thus, their common response to reparations is that they should not be responsible for the historical evils committed by white slaveowners because neither they nor their ancestors owned slaves or profited from slavery. Not only were former slaveowners given reparations right after the Civil War, but their direct progeny and others have continued to profit from opportunities and initiatives afforded them

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<sup>123</sup> Hernandez Quirindongo, *supra* note 122.

<sup>124</sup> Steven Newcomb & Shawnee Lenape, *Perspectives: Healing, Restoration, and Rematriation*, INDIGENOUS L. INST. (1995), <http://ili.nativeweb.org/perspect.html> [<https://perma.cc/9LGW-362Z>].

<sup>125</sup> Winbush, *supra* note 121, at vii.

because of systemic racism and white supremacist ideologies.<sup>126</sup> For Black Americans, to the contrary, their ability to build wealth, heal, and rehabilitate from enslavement and Jim Crow brutalization has been continually co-opted.<sup>127</sup> This is evident by the numerous cases of communities built by freed Blacks being destroyed by white mob violence, and the property summarily confiscated by local whites.<sup>128</sup> White violence and destruction of Black communities meant that the “ability of the former slaves to create intergenerational wealth, the key to all success in a capitalist nation, was systematically [prevented] for generations.”<sup>129</sup> In fact, Arthur Garrison<sup>130</sup> makes a sweeping indictment of the impact of systemic racism as reflected in specific legal policies designed to deprive African Americans of the opportunity to realize the full benefit of their citizenship:

The policy outcome of a century of Jim Crow is systemic racism. One result of this policy outcome is the design of modern urban America. The modern American urban structure of neighborhoods—how they look and how they are designed—is the result of racial neighborhood exclusions (early 1900s), legal restrictive covenants (1920–1948), followed by racially restrictive covenants, in fact (1948–1968), and the FHA policies of red lining of Black neighborhoods through the FHA (1934–1968), in conjunction with the practices of blockbusting, real estate value manipulation, and racial steering by the insurance and real estate industry.<sup>131</sup>

The undeniable fact is that this methodical exclusion represents co-optation of “the ability of the [formerly enslaved] . . . to create intergenerational wealth. . . . This ability was systematically destroyed for generations.”<sup>132</sup> White race riots like those of the Red Summer of 1919 not only took Black lives and wiped whole Black neighborhoods off the face

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<sup>126</sup> See Tera W. Hunter, *When Slaveowners Got Reparations*, N.Y. TIMES (Apr. 16, 2019), <https://www.nytimes.com/2019/04/16/opinion/when-slaveowners-got-reparations.html> [<https://perma.cc/U4HR-5Z9W>].

<sup>127</sup> See ROTHSTEIN, *supra* note 96.

<sup>128</sup> See Arthur Garrison, *Your View: A History of White Race Riots in America*, THE MORNING CALL (June 12, 2020), <https://www.mcall.com/opinion/mc-opi-unrest-america-garrison-20200612-6xczgrlphjgtjiosfde2mdrvbe-story.html> [<https://perma.cc/AP8X-2ETS>].

<sup>129</sup> *Id.*

<sup>130</sup> Dr. Arthur H. Garrison is Managing Editor of the Journal of Criminal Justice and Law and Professor of Criminal Justice, Constitution Law, Legal History, Criminal Justice Policy, Race and Criminal Justice at Kutztown University, Pennsylvania. *Garrison, Arthur H.*, KUTZTOWN UNIV., <https://www.kutztown.edu/people/profile.html?person=garrison> [<https://perma.cc/FJC5-DFSN>].

<sup>131</sup> Garrison, *supra* note 128.

<sup>132</sup> *Id.*

of the earth, they ended Black cultural knowledge and economic assets that could be passed to subsequent generations. Also, during the Great Depression, Black people were doubly impacted by financial conditions, especially given the fact that they were prevented from benefiting from the programs of the New Deal put in place by the Franklin D. Roosevelt administration to support American citizens.<sup>133</sup> This included access to the GI Bill which provided housing loans at reasonable rates—for whites only.<sup>134</sup> As Arthur Garrison underscores, whites were allowed to create intergenerational wealth both before and after the World Wars while, as a matter of policy, Blacks were prevented from doing the same.<sup>135</sup>

#### D. PROMISING INITIATIVES

To date, there exist national and international politico-economic structures that permit the former slavers and colonizers to eschew all responsibility for the past, while continuing to profit from their well-organized power.<sup>136</sup> This has meant that the United States and other governments have typically been able to ignore calls for restorative justice for chattel slavery on the international level. The United States Congress and others implicated as key players in the reparations debate have also been able to avoid addressing the issue, even though Congressman John Conyers submitted the H.R. 40 Bill to study the issue of reparations for African American slavery as early as 1989, only to have it ignored by that legislative body.<sup>137</sup> On the international front, in March 2021, the City Councilors of Bristol, United Kingdom, voted in favor of an “atonement and reparations” plan for Bristol’s role in the trans-Atlantic slave trade.<sup>138</sup> The Bank of England has apologized “for its historic links to slavery and promised to ensure no images of former bank officials who owned slaves

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<sup>133</sup> ROTHSTEIN, *supra* note 96, at 19.

<sup>134</sup> *Id.* at xi.

<sup>135</sup> Garrison, *supra* note 128.

<sup>136</sup> See ARAUJO, *supra* note 110, at 180–182.

<sup>137</sup> Melissa Nann Burke, *House Panel Advances Reparations Bill That Conyers Championed*, DET. NEWS (Apr. 14, 2021, 11:18 PM), <https://www.detroitnews.com/story/news/politics/2021/04/14/us-house-reparations-black-americans-bill-john-conyers/7219385002/> [<https://perma.cc/Q9N7-HZ3A>].

<sup>138</sup> *Bristol Council Passes Slave Trade Reparations Motion*, BBC (Mar. 2, 2021), <https://www.bbc.com/news/uk-england-bristol-56258320> [<https://perma.cc/YVD4-QK4Y>].

or profited from slavery are on display.”<sup>139</sup> Likewise, Lloyd’s of London and the brewer Greene King<sup>140</sup> have agreed to make reparation payments for the historic role the firms played in slavery, followed by the Royal Bank of Scotland which has indicated its intention to do the same.<sup>141</sup> Further suggestions are that these moves in the United Kingdom have come about in response to the massive Black Lives Matter protests in the country following the George Floyd murder.<sup>142</sup> Nevertheless, restorative justice for the brutal captivity and ongoing dispossession of descendants of enslaved Africans remains at the forefront of current national and international debates on reparations and restorative justice.

In 2013, the United Nations declared an International Decade of People of African Descent (IDPAD) and identified three pillars of focus: recognition, justice, and development.<sup>143</sup> These offer a window of opportunity in which to properly engage with the question of reparations on an international scale and promote the visibility and legitimacy of those working for reparative justice. One representation of such an initiative is The International Network of Scholars and Activists for Afrikan Reparations (INOSAAR), a transnational intervention strategy formed as an initiative in keeping with the United Nations’ themes for the IDPAD.<sup>144</sup> The INOSAAR is a collaborative trans-Atlantic project coordinated by its

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<sup>139</sup> Jeremy Kahn, *George Floyd Protests Force Britain to Reckon with Its Role in Slavery, Leading Some Companies to Pay Reparations*, FORTUNE (June 18, 2020, 9:42 AM), <https://fortune.com/2020/06/18/george-floyd-protests-uk-slavery-reparations/> [<https://perma.cc/MRX5-X774>].

<sup>140</sup> Lloyds of London, currently an international banking conglomerate, was formerly heavily involved in the transatlantic slave trade as an insurer of the merchandise of this unholy enterprise—the captured Africans. Greene King was founded in 1799 by Benjamin Greene, who also owned sugar cane plantations in the Caribbean where he owned enslaved Africans and profited from their labor. Benjamin was a huge advocate of slavery and wrote columns in his own newspaper critical of those campaigning for abolition. Like the majority of slaveowners at the time, he made a fortune from the forced labor of enslaved Africans and was financially compensated when slavery was abolished. Mark Landler, *Britain Grapples with Its Racist Past, From the Town Square to the Boardroom*, N.Y. TIMES (June 18, 2020), <https://www.nytimes.com/2020/06/18/world/europe/uk-slavery-trade-lloyds-greene-king.html> [<https://perma.cc/XZ2P-L7UW>].

<sup>141</sup> Kahn, *supra* note 139.

<sup>142</sup> *Id.*

<sup>143</sup> OHCHR and the International Decade for People of African Decent 2015-2024, UNITED NATIONS HUMAN RTS. OFF. OF THE HIGH COMM’R (OHCHR) [https://www.ohchr.org/EN/Issues/Racism/InternationalDecade/Pages/InternationalDecadeAfrica\\_nDescent.aspx](https://www.ohchr.org/EN/Issues/Racism/InternationalDecade/Pages/InternationalDecadeAfrica_nDescent.aspx) [<https://perma.cc/T5LD-5RP7>] (“In December 2013, the UN General Assembly adopted resolution 68/237, by which it proclaimed 2015 to 2024 to be the International Decade for People of African Descent [IDPAD] with the theme ‘People of African descent: recognition, justice and development.’”).

<sup>144</sup> *About the INOSAAR*, INT’L NETWORK OF SCHOLARS AND ACTIVISTS FOR AFRIKAN REPARATIONS (INOSAAR), <https://www.inosaar.llc.ed.ac.uk/about-inosaar> [<https://perma.cc/NF6P-LN8L>].

founders and directors, Professor Joyce Hope Scott (Boston University) and Dr. Nicola Frith (University of Edinburgh) in collaboration with activists based in Europe, West Africa, and the Americas.<sup>145</sup> Funding to support its creation was provided by the Arts and Humanities Research Council (AHRC) through their Research Networking Grant scheme under a highlight notice relating to the UN International Decade for People of African Descent (IDPAD, 2015–24).<sup>146</sup>

The central purpose of the grant was to create an international network dedicated to reparations and other forms of transitional justice for the enslavement, colonization, and genocide of African-descended people. Included in this definition, along with chattel slavery and systemic racism in the Americas and the Caribbean, was the invasion of the African continent by colonial powers (notably France and Britain) in the quest for new areas of political and cultural influence and economic expansion, and the subsequent oppression and deformation of African identities that arose from these histories.<sup>147</sup> By bringing together activists and academics, state and non-state actors, the INOSAAR has sought to explore the need for reparations and reparative justice in two key ways.<sup>148</sup>

The first was by focusing on and expanding the collective understandings of the possible meanings of reparations by engaging with the rich variety of research specialisms within the arts, humanities, and the social sciences.<sup>149</sup> This process aimed to address some important gaps in current reparations research by expanding its principal focus on legal and economic arguments through the incorporation of cultural, spiritual, and psychological reasoning. Second, the INOSAAR's idea of developing an international, trans-Atlantic association unifying scholarship and activism drew from both the strengths of scholar-activism in the United States and the urgent need to address the breaches in those relations in the United Kingdom.<sup>150</sup>

INOSAAR acknowledges that there will be contestatorial dialogue whenever scholars of the academy and community activists engage pressing concerns like restitution and transitional justice for

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<sup>145</sup> INT'L NETWORK OF SCHOLARS AND ACTIVISTS FOR AFRIKAN REPARATIONS [INOSAAR], *Global Report*, at 3, (Sept. 2019), [https://www.inosaar.llc.ed.ac.uk/sites/default/files/atoms/files/inosaar\\_global\\_report\\_sept\\_2019\\_final.pdf](https://www.inosaar.llc.ed.ac.uk/sites/default/files/atoms/files/inosaar_global_report_sept_2019_final.pdf) [<https://perma.cc/5Q8J-RS2S>].

<sup>146</sup> *About the INOSAAR*, *supra* note 144.

<sup>147</sup> *Global Report*, *supra* note 145, at 3.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *About the INOSAAR*, *supra* note 144.

African-descended people. This is particularly true where crimes against humanity—notably slavery and the trans-Atlantic trafficking of enslaved Africans—continue to have multiple, interconnected, and adverse effects on these same groups. The organization represents a concrete example of academic and community engagement that is rooted in the praxis of decolonization, pluriversality, and cognitive justice. The INOSAAR sees its approach to reparative justice as an innovative model of engagement, specifically, that is, to contribute to the attainment of the goals set out by the IDPAD, linked to the UN World Conference against Racism (2001).<sup>151</sup> Through organized workshops in the United Kingdom and West Africa, the aim has been to develop a policy framework that promotes the value of indigenous/resistance knowledges for community self-repairs as an innovative and culturally-meaningful response to the persistent legacies of slavery, racism, and colonialism.<sup>152</sup> Further, the aim is to offer an alternative response to the widespread orthodoxy of reparative action and restorative justice as simply a financial concern.<sup>153</sup>

#### IV. CONCLUSION

The horrific abuse endured by Black people during slavery did not end with the abolition of slavery. Emancipation was followed by one hundred more years of institutionalized subjugation (and dispossession) through the enactment of Black Codes and Jim Crow laws, peonage, convict leasing, domestic terrorism, lynching, theft, and the destruction of Black homes, towns, and communities.<sup>154</sup> Today the violations continue with indiscriminate police murders, injustice in the courts, unequal education, and substandard health care.<sup>155</sup> When we combine the human rights violations of institutionalized enslavement with these crimes fostered by racism and violation of citizenship rights, they all equal catastrophic damage to one class of American citizenry. As discouraging

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<sup>151</sup> See *Global Report*, *supra* note 145, at 3.

<sup>152</sup> *Id.* at 19–20.

<sup>153</sup> Scott, *supra* note 11.

<sup>154</sup> See BLACKMON, *supra* note 33.

<sup>155</sup> Mabinty Quarshie, N’dea Yancey-Bragg, Anne Godlasky, Jim Sergent & Veronica Bravo, *12 Charts Show How Racial Disparities Persist Across Wealth, Health, Education and Beyond*, USA TODAY (June 18, 2020, 10:06 AM) <https://www.usatoday.com/in-depth/news/2020/06/18/12-charts-racial-disparities-persist-across-wealth-health-and-beyond/3201129001/> [<https://perma.cc/88WP-5S6E>]; Austin Frakt, *Bad Medicine: The Harm That Comes from Racism*, N.Y. TIMES (Jul. 8, 2020), <https://www.nytimes.com/2020/01/13/upshot/bad-medicine-the-harm-that-comes-from-racism.html> [<https://perma.cc/M4MS-93TB>].

as it is today, “centuries after racist slave patrols formed the foundation of American policing in the South, Black people are still disproportionately arrested and killed by law enforcement, and police officers are rarely held to account.”<sup>156</sup>

That historical injustices and thefts at all levels were committed against people of African descent is undeniable. The very origins of the United States attest to the fact that the nation was founded as a slave colony and that captive Africans were imprisoned in an *enclave* of carcerality and deprivation as a result of laws, policies, and practices created and enforced by a ruling white elite.<sup>157</sup> In essence, narratives of United States history have reframed and glorified the European settlers’ purpose and program in the establishment of the nation. Nevertheless, the immoral and paradoxical nature of a nation existing on exclamations of God-given unalienable rights while at the same time depriving one group of its citizens of those very rights is a Frankenstein specter that has continued to haunt the nation since its founding. Thus, the matter of repair for moral and legal transgressions is interwoven into the long litany of injustice and dispossession of Black Americans. The justifications for restitution were foregrounded as early as the writings of John Locke in his *Second Treatise*.<sup>158</sup> The Quaker minister, John Woolman, also wrote a clear justification for reparations in his reflection on the inhumanity and violent excesses he witnessed taking place against enslaved Black people.<sup>159</sup> The irony today is that many in positions of power seem willing to rationalize the irrationality of chattel slavery and the subsequent abuse and dispossession of African people in order to protect white supremacist power and financial dominance.<sup>160</sup> To a large degree, perhaps this is why there has been a failure to confront the nation’s festering wounds of systemic racism and judicial injustices for African Americans. The emergence of social movements like the current “Black Lives Matter,” the National African American Reparations Commission (NAARC), the

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<sup>156</sup> Erika Alexander & Nina Turner, *Reparations is Not About Cutting a Check. It’s About Repairing a Community.*, USA TODAY (Apr. 15, 2021, 6:03 AM), <https://www.usatoday.com/in-depth/opinion/2021/04/15/reparations-not-cutting-check-its-repairing-community/7189526002/> [<https://perma.cc/GYD9-VPCC>].

<sup>157</sup> Anderson, *supra* note 17, at 12.

<sup>158</sup> See JOHN LOCKE, *SECOND TREATISE OF GOVERNMENT* § 27 (Jonathan Bennett ed. 2017) (1689), <https://www.earlymoderntexts.com/assets/pdfs/locke1689a.pdf> [<https://perma.cc/Q9FF-8J6H>].

<sup>159</sup> JOHN WOOLMAN, *A Plea for the Poor, or A Word of Remembrance and Caution to the Rich*, in *THE JOURNAL AND MAJOR ESSAYS OF JOHN WOOLMAN* 148, 188, <http://www.umilta.net/woolmanplea.html> [<https://perma.cc/Q64L-BFBH>].

<sup>160</sup> ROTHSTEIN, *supra* note 96.

National Coalition of Blacks for Reparations in America (N'COBRA), among others, reveals the urgency of the moment and the determination of African Americans to continue the long line of civil actions begun in the 18th century.<sup>161</sup>

To be sure, much change has occurred in United States society over the past several decades, particularly around policies of amelioration and reform to ensure civil rights for all Americans. It is, indeed, time to re-deploy those strategies to advance the agenda of H.R. 40 and other reparatory justice initiatives taking place. For example, a number of United States cities like Stockton, Sacramento, Providence, Austin, Durham, Asheville, Kansas City, and St. Paul have initiated policies to award reparations to their African American populations.<sup>162</sup> These overtures of repair are timely and laudable with the potential to foster healing and facilitate reconciliation, restorative justice, and restitution for the millions who seek justice. It is serendipitous that in this UN International Decade for People of African Descent (IDPAD), we find ourselves again in a transformative moment where reclaiming the soul of this nation can be undertaken seriously by addressing the claim for reparations. Theft, persecution, and dispossession have long been the defining signifiers of Black people's experience in America. Indeed, reparations to them are long-overdue, and it is time for a good-faith gesture of atonement.

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<sup>161</sup> Sutton, *supra* note 100.

<sup>162</sup> Adam Beam, *11 US Mayors Pledge to Pay Reparations for Slavery to Small Groups of Black Residents*, USA TODAY (June 20, 2021, 1:35 PM), <https://www.usatoday.com/story/news/nation/2021/06/19/reparations-slavery-pledged-11-us-mayors-pilot-program/7753319002/> [<https://perma.cc/LPX7-RP8X>].