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Black Reparations: Insights from the Social Sciences

Part I

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Black Reparations: Insights from the Social Sciences, Part I

ISSUE EDITORS
William Darity Jr., Thomas Craemer, Daina Ramey Berry, and Dania V. Francis

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Black Reparations in the United States, 2024: An Introduction

WILLIAM DARITY JR., THOMAS CRAEMER, DAINA RAMEY BERRY, AND DANIA V. FRANCIS

This introduction seeks to perform two tasks: it provides a roadmap for readers yet to be initiated into the reparations dialogue and provides fresh insights for those already well versed in it. Reparations are a program of acknowledgment, redress, and closure for a grievous injustice. This edition deals with reparations for black Americans whose ancestors were enslaved in the United States for government policies that allowed centuries of chattel slavery and legal race discrimination. The articles in this double issue represent the most up-to-date rigorous social science, policy, and historical research on the topic. This introduction discusses the world history of reparations efforts and the history of movements for black reparations in the United States; compares various plans for black American reparations, including various monetary estimation approaches; and discusses who should pay and what form payments ought to take. It closes by looking toward the future of the black American reparations movement.

Keywords: Black Reparations; chattel slavery; legal race discrimination; reparations for historical injustices; Holocaust reparations; reparations for Japanese American World War II internees; forty acres and a mule; H.R. 40

Slavery in the United States was a brutal, racialized system of forced labor under the constant threat of physical violence. It incentivized the rape of black women by white men seeking to increase their holdings of human property and led to centuries of absolute white exploitation of unpaid black labor.

Slavery created the startup capital for the U.S. economy's meteoric rise. It therefore indirectly benefits all Americans today, whether from immigrant or non-immigrant backgrounds, seeking economic opportunity in the United States.

Capital accumulated under slavery continues to grow exponentially because of compound interest. It accrues today to white heirs

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 Darity, William, Jr., Thomas Craemer, Daina Ramey Berry, and Dania V. Francis. 2024. "Black Reparations in the United States, 2024: An Introduction." *RSF: The Russell Sage Foundation Journal of the Social Sciences* 10(2): 1–28. https://doi.org/10.7758/RSF.2024.10.2.01. Direct correspondence to: William Darity Jr., at william.darity@duke.edu, Sanford School of Public Policy, 238 Sanford Building, Duke University, Durham, NC 27708, United States.

of estates accumulated through slave labor. Yet the heirs of the black laborers who toiled for free have been excluded by law from their rightful inheritances. This is a present-day injustice that calls for a present-day remedy.

Tragically, slavery is not the only atrocity visited on black Americans. Racial violence, lynching, and so-called (white) race riots followed on the heels of the abolition of slavery (Craemer et al. 2023). Post-slavery de jure race discrimination produced segregation not only the Jim Crow South but also the New Deal North (Rothstein 2017). Most blacks were denied many benefits introduced during the New Deal era that lifted many whites into the middle class (Katznelson 2005).

This has had disastrous intergenerational consequences for black and white wealth: the majority of white Americans today, 73 percent, own their own homes and hand them down from generation to generation but only a minority of blacks, 44 percent, do the same (Cozzi 2023). Close to 20 percent of blacks bequeath poverty to the next generation relative to only about 10 percent of whites (Statista 2023). White Americans own 85.6 percent of all employer businesses in the United States, blacks only 2.5 percent (Cook, Shepard, and Martinez-White 2022). Twenty-four percent of white households own stocks, versus a mere 8 percent of black households (Bennett and Chien 2022)

Reparations increasingly has been positioned as a solution to these grave historical injustices. In fact, redress has been issued to many peoples around the world, including the U.S. government's compensatory payments to other Americans. Nonetheless, reparations has never been paid to black descendants of U.S. chattel slavery, and reparations for that community of Americans remains highly contested.

Debates over the suitability of reparations are not new. Yet black reparations appear to be especially contentious in the United States. Race-based slavery only ended in the United States with a cataclysmic and bloody civil war. The depreciation of black lives has continued relentlessly since 1865, and the heated exchanges over black reparations are a function of how black people are devalued in the United States. American racism that produced the conditions that warrant black reparations is a central obstacle to the enactment and execution of a comprehensive plan for black reparations.

For definitional purposes, we adopt the concept of reparations advanced in William Darity and Kirsten Mullen's (2020, 2) study *From Here to Equality: Reparations for Black Americans in the Twenty-First Century*, "Reparations are a program of acknowledgment, redress, and closure for a grievous injustice." Acknowledgment constitutes the admission by the culpable party or their successors of responsibility for the harms inflicted on victims or their heirs, coupled with a declared commitment to undertake redress. Redress is the act of restitution, the specific steps taken by the culpable party or their successors to provide compensation for damages to the victims or their heirs. Closure is the settling of accounts, a mutual agreement (without coercion) between the two parties that the debt has been met. Thereafter, the victimized community will make no further claims on the culpable party or their successors unless the atrocities are renewed or entirely new atrocities occur (Darity and Mullen 2020, 2–4).[1]

From the perspective of the specific case for reparations for black Americans whose ancestors were enslaved in the United States, the claim for redress is predicated on harms rooted in national policies from the formation of the republic to the present day. The most obvious of these is the regime of chattel slavery followed by nearly a century of legal race discrimination, or American apartheid.

After the official end of American apartheid with the passage of the Civil Rights Act of 1964, the succeeding sixty years have witnessed mass

1. International law provides a definition of reparations based upon five principles: "restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition" (Medicins San Frontieres 2023). Restitution, compensation, and rehabilitation all fall under the category of redress in the Darity and Mullen definition. Satisfaction and guarantees of non-repetition mesh with their condition of closure. However, international law does not include the first category in Darity and Mullen's ARC (acknowledgment, redress, and closure) formulation—acknowledgment.

incarceration, ongoing police killings of unarmed blacks, continued discrimination in housing, employment, and credit markers, and a persistent markdown on the value of black lives (Darity and Mullen 2020, 5–6).

The articles in this issue of *RSF: The Russell Sage Foundation Journal of the Social Sciences* bring together the most up-to-date, rigorous social sciences, policy, and historical research on the full range of developments and issues with respect to the case for reparations for black Americans.

In this introduction, the team of editors seeks to perform two tasks simultaneously, provide a roadmap to the issues at stake for those interested readers yet to be initiated into the reparations dialogue and provide useful fresh insights for those already well versed in the conversation. Our discussion moves from the past to the present and from the global to the local.

For context, the first section of this article explores the world history of reparations efforts. The second turns to the record of movements for black reparations in the United States. The third provides a comparative examination of various plans for black American reparations. The fourth examines various approaches toward determination of eligibility standards for black reparations, the monetary amounts for black reparations, who should pay, and what form payments ought to take. The fifth and final section looks toward the future of the black American reparations movement.

A BRIEF GLOBAL HISTORY OF REPARATIONS

Black people in the United States sought reparations during slavery and have been fighting for them, at least, since the Civil War. Today's activism around reparations is not a new cause. Enslaved people were the first advocates for redress. They knew from direct experience the injustices imposed on them, and they understood the toll on their physical, emotional, and familial lives. They grasped the devastating impact on their financial futures and the financial futures of their progeny. They fully recognized and understood the dichotomy between their personhood and being subjected to commodification: their humanity became a backdrop against the monetization of the bodies and theft of their labor for the enrichment of others.

Contemporary debates on reparations can be informed by international evidence of other groups who sought and received redress for collective victimization. Apart from many cases in which defeated nations or peoples were made to pay tribute to the victors, those most relevant to the black American claim involve payments made to victims of atrocities. Those payments have been made either by the perpetrators or their successors or by a third party choosing to take responsibility for the act of compensation. One of the most noteworthy instances of this type involved Germany making payments to the victims of the Holocaust and the state of Israel.

On September 10, 1952, Israel and Germany signed a treaty (informally known as the Luxembourg Agreements) acknowledging "unspeakable criminal acts . . . perpetrated against the Jewish people during the National-Socialist régime of terror." In Article 1 of this agreement, Germany agreed to pay 3 billion deutsche marks to Holocaust victims. They added another $1.4 billion to living survivors at the seventieth anniversary of this agreement in September 2022. This brought Germany's "total compensation to more than 80 billion euros," making it "the first time a defeated power paid compensation to civilians for wartime losses and suffering" (Grieshaber 2022).

Over the course of more than seventy years, not only have the direct victims who survived the Nazi's extermination plan received compensation but so have their heirs and descendants. Financial compensation to the victims also has been accompanied by resources devoted to an educational campaign to ensure that this history is recorded, taught, and never forgotten; some of the funds support Holocaust education at museums and cultural centers worldwide.

Holding Germany accountable via international treaties is just one form of restitution. Yet it appears that even countries who were not the perpetrators of genocidal acts participated in holding Germany accountable. The United States, in particular, has actively supported compensation for Holocaust survivors and also

led efforts, since World War II, to return and protect cultural relics and memorabilia.

In 2009, for example, the U.S. Department of State partnered with the prime minister of the Czech Republic and forty-four other European states and issued the Terezin Declaration on Holocaust Era Assets and Related Issues through the State Department's Office of the Special Envoy for Holocaust Issues. The purpose of this act is to support and protect "advanced age" survivors of the Holocaust, to "respect their personal dignity," to "rectify the consequences of wrongful property seizures," and to "develop measures to combat anti-Semitism" (U.S. Department of State 2009).

The declaration included special measures to preserve Jewish cultural property by making sure that "appropriate materials [are] available to scholars," such as archival documents and other ephemera. The expectation to maintain these records at repositories, museums, and cultural societies was an important part of this declaration, along with the encouragement that states create "annual ceremonies of remembrance and commemoration" (U.S. Department of State 2009). American participation in the World Jewish Restitution Organization conferences clearly outline decades of support for Holocaust survivors and their heirs (WJRO 2020).

In part to reward Native Americans for their contribution to the war effort after World War II, Congress set up the Indian Claims Commission in 1946 to hear "Indian claims for any lands stolen from them since the creation of the USA in 1776" (Boxer 2009). However, actual reparations payments have been exceedingly modest. For example, according to CNN (2012), "In 2012, the United States finalized a $3.4 billion settlement with American Indians for mismanagement of their land and resources," and according to Rebecca Hersher (2016), in 2016, "The U.S. government . . . agreed to pay a total of $492 million to 17 American Indian tribes for mismanaging natural resources and other tribal assets."

A resolution by the National Congress of American Indians (NCAI 2019) that urges Congress to authorize reparations for American Indians and Alaska Natives acknowledges that "various efforts have been made to settle American Indian and Alaska Native claims," but argues "those efforts have been woefully inadequate." Native American reparations claims are particularly relevant to black reparations in the United States; in both cases, the historical injustices to be addressed reach back from the present to the founding of the nation.

A more recent example of federal reparations in the United States is the Civil Liberties Act of 1988. The U.S. government made $20,000 payments to Japanese Americans who had been compelled to undergo mass incarceration during World War II (National Archives 2017). Through this act, the Civil Rights Division of the Department of Justice established the Office of Redress Administration, which oversaw, acknowledged, apologized for, and offered restitution for, as specified in the Civil Liberties Act, the "injustices of the evacuation, relocation and internment of Japanese Americans during World War II."

A yet more recent example of federal reparations provided by the United States is compensation to Marshall Islanders for sixty-seven U.S. nuclear bomb tests there from 1946 to 1958 (Brunnstrom and Martina 2023). According to the U.S. Department of the Interior (2007), Marshall Islands Nuclear Testing Compensation consisted of "a total of $1.5 billion in assistance from 2004 through 2023."

Unlike the Japanese American or Marshall Islands examples, where the United States was blatantly culpable, there have been several instances where the national government paid reparations to victims when the U.S. government was not the perpetrator. These include the federal government's payments to families who lost loved ones during the September 11, 2001, terrorist attacks and $4.4 million payments to each American citizen held hostage in Iran from November 4, 1979, to January 20, 1981.

Precedents such as the U.S. reparations to Japanese American World War II internees, Marshall Islands nuclear testing compensation, and many other recent programs are of limited comparability to black reparations in the United States. In each of these cases, reparations went primarily, although not exclusively, to direct victims of an atrocity. In contrast, Native American reparations are particularly germane as a precedent for black

reparations in the United States. Both cases represent injustices over long periods from the colonial era to the present.

Outside the United States, reparations have also become commonplace. For example, the South African parliament paid reparations to those who participated in the amnesty hearings sponsored by the Truth and Reconciliation Commission (Republic of South Africa 1995).[2] In an act first issued in 1993, those who suffered during apartheid or their relatives testified at public amnesty hearings. Those whose testimonies were confirmed received a (very modest) payment of US$3,910.

Acts of mass violence committed by other government regimes including the British during the Mau Mau Rebellion (1952–1960), the Philippines under Fernando Marcos (1965–1986), and Chile under General Augusto Pinochet (1973–1990), resulted in redress measures years later. In 2013, the British government paid out £19.9 million to 5,228 Kenyan Mau Mau survivors. However, many were dissatisfied with this form of compensation and sued again in 2016, asking also for restitution for false imprisonment, forced labor, and interruption to their right to an education. In 2023, Mau Mau veterans continued lobbying for compensation and demanded substantial additional compensation. It is not clear whether these demands will be met, even in part (Miriri and Ross 2023).

However, redress in the Philippines led to somewhat different results. To "right the wrongs of the past in the Philippines," President Benigno Aquino signed a law in 2012 to provide $224 million in compensation to the thousands of people who suffered under the Marcos regime. This new human rights law was "the first of its kind in Asia." Additionally, the law rolled back the Marcos martial law that had allowed for the practice of abduction of people "by government security forces."

More than 1,600 people disappeared during Marcos's rule (Desapaericidos, n.d.). Another thousand have vanished—presumably through government-sanctioned abductions—since the end of Marcos's dictatorship, signifying the need for the 2012 law to put an end to the legacy of government engineered disappearances (BBC 2012, 2013).

The Chilean government modeled its plans for redress after South Africa and established a National Commission for Truth and Reconciliation. After hearings and testimonies from more than thirty-five thousand people, two government commissions (one under Raúl Rettig and a second under Bishop Sergio Valech), reports confirmed 3,428 "cases of disappearance, killing, torture, and kidnapping." Payments were about US$190 per month, and victims and their relatives received "free education, housing, and health benefits" (Associated Press 2004; USIP 1990).

A number of other countries undertook acts of restitution for human rights violations including Algeria's payments of €310 million to fifty thousand Harkis, Algerian Muslims who fought with France during the Algerian war for independence in 1962 (Al-Awsat 2022), Canada's payment of CA$2.8 billion to indigenous students forced to attend government funded residential schools (Canadian Press 2023), and Colombia's payment of US$29 billion to over 7.6 million persons who suffered via state and nonstate violence during its civil war (RRVTS, n.d.). In the case of Colombia, the reparations program will likely grow substantially after the government pledged in 2023 to pay reparations to victims of exterminative violence against Patriotic Unity party members in the 1980s and 1990s (Taylor 2023).

Reparations paid to survivors of the German Holocaust, South African apartheid, or human rights abuses in Kenya, the Philippines, or Chile went to survivors relatively soon after the historical injustice had occurred. This temporal proximity between harm and attempted redress may make a reparations process appear more feasible. It should be born in mind, however, that injustices that Native Americans and black Americans suffered stretch hundreds of years into the past. Thus reparations to Native

2. The period of legal segregation in South Africa lasted nearly fifty years, from 1948 to the early 1990s. In this instance, a regime change took place with a post-apartheid government established by a new constitution that took effect in 1997. Such a change does not absolve the new regime from accounting for the damages wreaked by its predecessor.

Americans may serve as a direct precedent for black reparations.

Is it, then, that reparations for slavery lack apparent feasibility, perhaps because the numbers of victims (the enslaved Africans and their black descendants) are simply too numerous? Historical precedent suggests that this is not the case. In at least forty-four countries or territories, including the United States, reparations for slavery have been paid as a matter of course, based on the number of the enslaved. Disconcertingly, however, in virtually all cases where slavery reparations have been paid, the compensation went to the former enslavers for the loss of their property, not to the formerly enslaved.[3] That reparations have been forthcoming to any group of recipients except most of the black descendants of the enslaved anywhere in the world (the United States, the Caribbean, Latin America) suggests that racial considerations rather than questions of feasibility may explain the reluctance.[4]

The global context indicates the black American quest for redress, in principle, is neither unique nor exceptional.

A BRIEF HISTORY OF THE BLACK REPARATIONS MOVEMENT IN THE UNITED STATES

The first claims made by blacks in the United States took the form of lawsuits and involved persons who sued for freedom, not necessarily suing for compensation (reparations) for slavery. Although some enslaved people sought freedom, others wanted both liberty and compensation. For example, Elizabeth Freeman (Mum Bet) filed a lawsuit for freedom in 1781 and won (Jones 2021). She did not seek monetary compensation.

However, eighteenth-century evidence attests to persons suing for both. Quock Walker (Spector 1968) filed a lawsuit in 1781 seeking both freedom and financial compensation for damages. Ten years later, in 1791, Nelly Mumpherd submitted a deposition in New York City to protect her freedom after a man named Henry Hurt tried to assault her. Hurt took money and Mumpherd's freedom papers, and she knew too well the value of those papers. In defense of herself, Mumpherd brought Hurt to court. She won the case, protected her freedom, and received compensation for damages (Jones 2021).

Another black woman, this time an enslaved woman named Belinda Sutton (Royall House and Slave Quarters, n.d.) took her former enslaver Isaac Royall to court in 1783. After Royall, a British loyalist, fled to England, Sutton was left free but penniless. Decades after being brought to the United States, Sutton sued the state of Massachusetts for pensions for herself and her two children—and won (Berry and Gross 2020).

Perhaps the most successful effort to acquire personal restitution is represented by the legal case brought forward in 1870 by Henrietta Wood. Wood was a free black woman living in Ohio in 1853 when she was kidnapped by Zebu-

3. One notable exception is land provided to formerly enslaved blacks by Native American tribes who were allied with the Confederacy during the Civil War: Cherokees, Choctaws, Chickasaws, Muscogees (formerly called Creeks), and Seminoles. After the war, the U.S. federal government insisted that they provide land to their freedmen and freedwomen at the very same time that same federal government denied land to its own freedmen and freedwomen (Wikipedia 2022).

4. Reparations to enslavers, not to the enslaved, were paid by Haiti, Guadeloupe, Martinique, and French Guiana (Beauvois 2017, 5); Chile (Aurora de Chile, n.d.), Argentina (Coria 1997), Gran Colombia (Colombia, Venezuela, Ecuador, and Panama; Colombia Aprende 2007; Free Womb Project, n.d.b; Fundacion Polar 2007; Patiño 2007), Peru (Valdez and Villamonte 2006), Costa Rica (*Tico Times* 2004), Uruguay (Presidency of Uruguay 2006), Bolivia (Free Womb Project, n.d.a), Mexico (Weltman-Cisneros 2012), Paraguay (Francois 1999, 777), Cuba, and Puerto Rico; Jamaica, Trinidad and Tobago, Guyana, Belize, Bahamas, Barbados, Saint Lucia, Grenada, St. Vincent and Grenadines, Antigua and Barbuda, Dominica, Saint Kitts and Nevis, the Cayman Islands, Turks and Caicos, the British Virgin Islands, Anguilla, and Montserrat; Suriname, Curaçao, Aruba, Sint Marten, Caribbean Netherlands; Saint Barthélemy; the U.S. Virgin Islands; the United States, in many northern states and in Washington, D.C.; and Brazil (Beauvois 2017, 5). In none of these forty-four countries or territories have reparations ever been paid to the black enslaved or to their rightful heirs.

lon Ward, sold into slavery, and held captive by Mississippi slaveholder Gerard Brandon until after the end of the Civil War. She sued her kidnapper for damages. In 1878, eight years after she filed the suit, the case finally went to trial. An all-male, all-white jury returned a decision in Wood's favor with the largest settlement for enslavement to that date, $2,500. Still, Woods actually had sued Ward for $20,000 in damages, nearly ten times the amount she eventually was awarded (McDaniel 2019).

Giuliana Perrone (2024, this volume, issue 2) provides multiple examples of lawsuits involving enslaved persons who were freed through the wills of their deceased enslavers and often granted land or other assets. Nevertheless, they typically had to fight for their freedom and assets after relatives of the deceased contested the wills. Owner manumission seems to have been infrequent, and owner manumission coupled with some form of bequest even more rare. However, Perrone conceptualizes the bequests as voluntary reparations from enslavers and a deeper understanding of this form of atonement might lend support to contemporary calls for reparations.

All of these instances involve individual claims for restitution; they were not class action suits. More than two hundred years later, Deadria Farmer-Paellmann brought lawsuits against FleetBoston (now merged with Bank of America), Aetna, and New York Life for their history of complicity with slavery and slaveholding on behalf of a class of plaintiffs that included "millions of African-American slave descendants."[5]

Farmer-Paellman's lawsuits failed, as have all lawsuits on behalf of black American descendants of the enslaved. In rejecting these claims, judges have either invoked the principle of sovereign immunity or violation of statutes of limitations. Furthermore, when charges of complicity with slavery, including the buying and selling of human beings, are brought against private organizations or institutions, they are insulated to a degree by the fact their actions, at the time, were perfectly legal. This is without doubt immoral but legal under the laws of the land.

The first, and most significant, class action lawsuit directed at the federal government was brought by attorney Cornelius J. Jones in 1915 on behalf of the National Ex-Slave Mutual Relief, Bounty and Pension Association of the United States of America (MRB&PA). The MRB&PA was an organization pursuing restitution for the formerly enslaved founded by Isaiah Dickerson and Callie House, the latter the most important figure in the late nineteenth- and early twentieth-century black reparations movement.

The lawsuit sought damages in the amount of $68 million, the value of cotton taxes collected by the U.S. government between 1862 and 1868, an amount Jones argued was due to "the appellants because the cotton had been produced by them and their ancestors as a result of their 'involuntary servitude.'"[6] Faced with determined and vicious opposition from the national government directed with special ferocity at House, the lawsuit failed with the Supreme Court confirming the Court of Appeals of the District of Columbia's decision to deny on grounds of sovereign immunity (Booker Perry 2010).

The judicial route never has been propitious for collective black reparations.

The first major collective claim for restitution was embodied in the unfulfilled promise of forty acres land grants allotted to the freedmen and freedwomen at the end of the Civil War. As early as 1775, Thomas Paine suggested land distribution to the formerly enslaved, perhaps over-optimistically presuming that slavery would come to an end with the formation of the new republic. History confirms that his vision for land distribution never came to fruition.

Four million enslaved black people obtained freedom in 1865 and were left to fend for themselves. Some described freedom as being turned out like cattle. Many did not know where to go or how to negotiate their labor contracts, and economic stability was essential to their success. "One of the country's earliest ef-

5. *Farmer-Paellmann v. Fleetboston Financial Corp.*, Civil Action # CV 02 1862, Class Action (E.D.N.Y. March 26, 2002).

6. *Johnson v. McAdoo*, 45 App. D.C. 440 (1916).

forts to dramatically alter blacks' economic condition" Darity and Mullen (2020, 2) explain, "was the federal government's post–Civil War plan to give at least forty acres of abandoned and confiscated land as well as a mule to each formerly enslaved family of four (or ten acres per person)."

The first phase, outlined in General William T. Sherman's Special Field Orders No. 15, allocated 5.3 million acres of land, stretching from the sea islands of South Carolina to northern Florida bordered by the St. John's River, to the freedmen and freedwomen. But only forty thousand freed people managed to take residence on four hundred thousand acres, less than 10 percent of the land specified in Sherman's order, before being forced off the land under orders of Lincoln's successor, Andrew Johnson (Darity and Mullen 2020, 158–59).

In 1883, on behalf of the all-black, two-thousand-member Indemnity Party he had formed, John Wayne Niles petitioned Congress for land to be distributed to the freedpeople and their descendants in the western territories. He successfully generated support from an Ohio senator, John Sherman, brother of General Sherman, to present the petition for slave reparations to the Senate, but subsequently the petition was tabled into oblivion (Darity 2021a).

Prior to the cotton tax lawsuit, Callie House (Berry 2005) brought forward a petition on behalf of her chartered MRB&PA for pensions for those who had been subjected to slavery. Her organization, founded in 1898, had a membership of three hundred thousand by 1900. Support was so strong and growing that House, seen as a threat to established interests particularly when the MRB&PA sued the federal government for $68 million, was prosecuted on trumped-up charges of mail fraud, sending her to prison, and effectively removing her from the movement (Booker Perry 2010).

Nevertheless, the movement did not die. Many of her disciples moved into the various branches of Marcus Garvey's Universal Negro Improvement Association, founded in 1914, and continued the call for reparations for the formerly enslaved and their posterity. A charismatic and determined Garvey disciple, Queen Mother Audley Moore, brought a petition to the United Nations in 1957 seeking land and billions of dollars from the United States government as restitution to the freedpeople and their descendants (Mullen 2022b; see also Berry 2005, 237; Blain 2019).

At the time, the petition did not succeed—nor is it apparent that the United Nations had any leverage to make the United States pay reparations, in the first place—although nearly sixty years later, the United Nations Working Group of Experts on Peoples of African Descent explicitly called for reparations for black Americans.

Despite her pan-Africanist orientation, Moore's focus for reparations was directed at the U.S. government's obligation specifically to those black Americans whose ancestors were enslaved in the United States. Hence, in 1963, she formed the Committee for Reparations for Descendants of U.S. Slaves. This effort evolved into the founding in 1968 of the Republic of New Afrika, an organization calling for the formation of a separate nation out of five states of the old Confederacy, peopled and controlled by black Americans (Blain 2019).

In 1969, James Forman seized the podium at New York City's Riverside Church to issue the Black Manifesto, which called for white churches and synagogues to pay "$500 million . . . for the crimes religious institutions had visited upon black Americans in the United States" (Darity and Mullen 2020, 14; Riverside Church, n.d.; Berry 2005, 239). Ultimately, donations of $500,000 were forthcoming, only 0.1 percent of the total demanded. The funds were used to create several institutions, including Black Star Publications and the Black Economic Research Center, that have not survived.

The U.S. payments of restitution to Japanese Americans subjected to imprisonment during World War II was preceded by a report with recommendations from the congressionally mandated Commission on Wartime Relocation and Internment of Civilians. After passage of the Civil Liberties Act of 1988, Rep. John Conyers (D-Michigan), with persistent pressure from Detroit-based activist "Reparations Ray" Jenkins, introduced legislation, soon to be labeled H.R. 40 as a nod to the unfulfilled promise of forty acres land grants, to create a similar com-

mission to address the matter of black reparations.

Over the next thirty years, the bill's text was repeatedly modified by the leadership of two allied organizations, the National Coalition of Blacks for Reparations in America (N'COBRA) and the National African American Reparations Commission (NAARC).[7] Curiously, the bill does not provide for any reparations to descendants of people enslaved in the United States. It only calls for the formation of a commission to investigate reparations, despite the fact that reparations have been studied at length in the extant literature since the bill was first introduced (see, among others, America 1990; Darity 2008; Craemer 2015).

Both organizations, avowedly pan-African, departed from Queen Mother Audley Moore's particular emphasis on U.S. reparations going to black American descendants of U.S. slavery, instead seeking a more global, diasporic reach for compensation coming from the U.S. government.

In addition to lobbying for passage of H.R. 40 on the federal level, the reparations movement is presently devoting great attention to redress projects at the state and local levels. At the state level, California's Reparations Task Force (2023) completed the second segment of its two-part report in June 2023. The state of Illinois now has activated an African Descent-Citizens Reparations Commission, and New York's State Assembly has passed legislation establishing its own commission. These are three states out of fifty, none of them located in the southeastern part of the nation.

A spiraling wave of cities and towns is now taking steps toward reparations. However, the total number of municipalities and townships on this path still is less than 150, a mere 0.1 percent of approximately 20,000 incorporated cities, towns, and villages across the country. In this volume, Olivia Reneau (2024, issue 3) details the nineteen municipalities that have passed reparations resolutions as of March 2023. Using a mixed-method analysis, Reneau codes the text of each municipality's resolution to pull out themes around sources of injustice and evidence of disparity and then combines the coded data with quantitative data about the municipalities to uncover patterns in the types of reparations programs different municipalities support.

Also in this volume, Monique Newton and Matthew Nelsen (2024, issue 3) provide a case study of the Evanston, Illinois, reparations program. Implemented in 2021, Evanston began providing housing grants of $25,000 for black residents (up to a total of $10 million) as redress for past discriminatory housing policies. They explore in depth the tensions and conundrums that have arisen with this local initiative.

Prior to the recent surge in local reparations initiatives, there were three occasions of state level restitution for antiblack atrocities, the Rosewood, Florida, massacre of 1923, the closing of public schools in Prince Edward County, Virginia, from 1959 to 1964 to avoid desegregation, and police torture in Chicago in the 1970s and 1990s.

Indeed, in the case of the Florida legislature awarding payments to victims of the 1923 Rosewood massacre, the lawmakers consciously avoided using the term reparations. They agreed "to award direct cash payments to nine survivors of the event. Descendants of those survivors also received money, in the form of small cash sums and college scholarships" (Luckerson 2020). The Rosewood massacre apparently is the only one of upward of one hundred mass killings of blacks by white mobs between the Civil War and the 1950s for which any form of restitution has been made to the victims or their descendants.

After being ordered to desegregate on May

7. In an opinion piece for Bloomberg, Kirsten Mullen (2022a) details both the structural and substantive weaknesses in H.R. 40, arguing that it will not lead to a true reparations program for black American descendants of U.S. slavery. Going through multiple revisions over the years, largely under the influence of NAARC and N'COBRA, H.R. 40 originally specified seven commissioners but now specifies fifteen, six of whom "shall be selected from the major civil society and reparations organizations that have historically championed the cause of reparatory justice." Effectively, NAARC and N'COBRA seem to have written themselves into the bill to ensure their representation on the commission.

1, 1959, the school board in Prince Edward County, Virginia, chose to close public schools entirely; they were not reopened until 1964. White students were given a lifeline to private all-white academies via county tax credits and state vouchers. Large numbers of black students had to discontinue their education altogether (VMHC 2023). In 2005, the Virginia General Assembly finally established a reparations plan for the black students who were denied access to schooling:

> Combining private donations from billionaire John Kluge with state funds, scholarships were offered to the victims of the shuttered school system to enable them to pursue higher education at this much later date. No compensation was offered for past years of lost schooling. Nor was compensation offered to offset the impact of the lost schooling on the affected students' long-term prospects for employment and earnings. (Darity and Mullen 2020, 21)

Given that the beneficiaries of this plan were in their fifties, sixties, and even seventies, by 2005, very few were able to take advantage of the scholarships for study at state-supported institutions of higher education or vocational training.

For almost two decades between the 1970s and 1990s, Chicago officers under the leadership of Commander Jon Burge tortured 125 persons to extract confessions, many of whom were not guilty of any crime. In 2015, the city of Chicago committed to a "$5.5 million reparations package that included a formal apology from former Chicago Mayor Rahm Emanuel, financial compensation to survivors and their families, waived tuition to City Colleges, a mandatory Chicago Public Schools curriculum to educate students about police torture under Burge, and the creation of a permanent, public memorial" (Jaffe 2020).

The only component of the reparations package that remains unmet is the erection of the memorial. Critics of the plan have argued that it is incomplete because it was not only police under Burge's authority who engaged in torture practices in Chicago. Elizabeth Davies, Jenn Jackson, and David Knight (2024, this volume, issue 3) take a deeper dive into the Chicago reparations initiative through interviews with local advocates as well as reparations recipients.

The notorious Tuskegee syphilis experiment provides an example of court-recognized reparations. The intentional failure to inform the black men infected with syphilis of their illness and the intentional failure to provide them with treatment, even after effective drugs became available, provided a rationale for reparations persuasive to the courts.

In 1974, the NAACP filed a class action suit on behalf of the subjects of the horrific experiment, who had not been given the opportunity to extend informed consent. The favorable decision resulted in a $10 million settlement from the federal government given that the U.S. Public Health Service had conducted the experiment (Edwards, Berdie, and Welburn 2024).

In this volume, Linda Bilmes and Cornell Brooks (2024, issue 2) highlight, through a taxonomy of atrocity and redress, the vast number of times the U.S. federal government has compensated individuals for harms across multiple realms, such as environmental damages and vaccine injuries. They argue that this pattern of compensation should normalize reparations, setting precedents that should ease the path for reparations for black Americans.

REVIEW OF PLANS FOR BLACK REPARATIONS IN THE UNITED STATES

In this section, we consider major plans put forward thus far to conduct black reparations in the United States. Among the many proposals for black reparations over the decades, we identify four that have been developed as relatively detailed and concrete. Any substantive plan must address at least four considerations: Who should be eligible to receive black reparations? How much is owed to the eligible recipients? How should compensation be made? Who is responsible for making compensation?

In the current volume, Kathryn Edwards, Lisa Berdie, and Jonathan Welburn (2024, issue 2) set the stage for this discussion by presenting case studies of past reparations policies that have succeeded yet fail to offer important insights into what features should be included in a reparations policy. A key takeaway from

their study is that reparations should have a redress and atonement component to shift the power dynamics between perpetrator and victim. A second takeaway is that the design of the program should be victim led. Finally, the policy should be a "living" policy, open to adjustment and reevaluation as time goes on. In light of these lessons, we review four major reparations plans.

The four major plans we review are tRoy Brooks's (2004) atonement model, the National African American Reparations Commission's Preliminary 10-Point Program (NAARC 2015), William Darity and Kirsten Mullen's (2020) federal program of black reparations, and the California Reparation Task Force's (2023) proposals. The discussion of the plans is organized under separate subheadings discussing their differing specific goals, conceptualizations of providers, eligibility standards, modalities, administration of funds, and estimated per-recipient amounts (see table 1).

Program Goals

According to Roy Brooks (2004), the primary goal of a reparations plan (see table 1, row 1), is "atonement from the perpetrator" (140), that is, a formal apology and some form of compensatory action "because they make apologies believable" (142). In his view, "Racial reconciliation should be the primary purpose of slave redress" (141), not necessarily a "preoccupation with compensation" for the victimized side (142).

Brooks (2004, 143) says that once a formal apology and compensation have been rendered, the victimized side may have a civic obligation to forgive. Thus the Brooks model can be characterized as primarily perpetrator focused. In contrast, the other three models focus primarily on redress for, and the well-being of the victimized side and would likely be characterized as instantiations of what Brooks criticizes as the "tort model." Brooks is critical of the tort model because in his view it is "incapable of generating the one ingredient that I believe is or should be the sine qua non of slave redress—namely atonement, and ultimately, racial reconciliation" (98–99).

In contrast to the focus on the perpetrator side, the other plans center on the victimized side. For example, the primary goal of the NAARC's Preliminary 10-Point Plan (2015, 1) is to "repair and heal the damages done to Native people and Africans" in the United States. Darity and Mullen's (2020, 263) plan seeks to close the national average per capita black-white wealth gap because they view the racial wealth gap "as the most robust indicator of the cumulative economic effects of white supremacy in the United States."

The 2023 California Reparations Task Force (CRTF) plan attempts to achieve a similar victim-centered goal at the state level. However, although the wealth gap works well as an aggregate indicator of black losses on the federal level, a specific state's racial wealth gap may be influenced by other factors. Hence, the CRTF tasked an expert team—which included Kaycea Campbell, Thomas Craemer, William Darity Jr., Kirsten Mullen, and the late William Spriggs—to estimate some losses due to specific racial injustices for which the State of California was partially or directly responsible, which then can be added up, depending on an eligible recipient's length of residence in California.

Proposed Reparations Providers

All four plans agree that some level of government should be the reparations provider rather than exclusively private individuals or organizations (table 1, row 2). Three plans view the federal government as responsible because it allowed slavery to exist prior to the end of the Civil War. Only the CRTF's (2023) plan treats a state government as the responsible provider.[8]

8. Although NAARC's 10-Point Plan is predicated on the federal government as the payer, NAARC's leadership has been an aggressive supporter of the local reparations movement (NAARC 2021). In contrast, Darity and Mullen (2023) say that "this range of initiatives that are being undertaken in a number of municipalities and in a handful of states are intrinsically *incomplete, inconsistent, and inequitable*. By incomplete, we mean that these policies are practices being undertaken by cities and states that are labeled as reparations intrinsically cannot fulfill the amount that is due. The federal government does have the capacity to meet a bill of $14.3 trillion. We think that's fully evident as a consequence of what occurred in response to the Great Recession, as well as what

Table 1. Four Proposed Black Reparations Plans Compared

	Brooks (2004)	NAARC (2015)	Darity and Mullen (2020)	CRTF (2023)
Primary goal	Atonement of perpetrators and racial reconciliation; benefit all Americans, not just black Americans	Repair and heal the damages done to all descendants of Africans in the United States	Close black-white average per capita wealth gap in the United States	Compensate victims of slavery and discrimination in California for some specific losses due to state action
Proposed providers	U.S. federal government	U.S. federal government	U.S. federal government	California state government
Proposed recipients	Black American children newborn within approximately ten years	All people of African descent in the United States	Descendants of at least one person enslaved in the United States who have self-identified as black (or synonymous) at least twelve years before the enactment of a reparations plan or a study commission for reparations	Californians who are African American descendants of a chattel enslaved person, or descendants of a free black person living in the United States prior to the end of the nineteenth century
Proposed modalities	Formal apology, museum of slavery and twenty-five-year atonement, trust fund for every newborn black American child born within approximately ten years.	Formal apology, black Holocaust Institute, repatriation rights, land, cooperative enterprises, health resources, education funds, affordable housing, funding for black media, black memorials, criminal justice reform	Must include direct payment of cash or its equivalent to eligible recipients but could also include trust funds and annuities	Payment of cash or its equivalent to eligible recipients

Administration	Reputable trust administrators selected by prominent black Americans	National Reparations Trust Authority of "credible" representatives of community organizations	Eligible recipients (monetary payments) coupled with a supervisory board elected by eligible recipients (trust funds)	State Freedman's Affairs Agency to make direct payments and aid with proof of eligibility
Preliminary per-recipient estimates in 2020 dollars	$69,647	Not specified	$357,000	$13,619 per year of California residence for health discrimination; $2,352 per year of California residence between 1971 and 2020 for overpolicing during the war on drugs; $145,847 for housing discrimination; $77,000 for business devaluation, more as further evidence surfaces

Source: Authors' tabulation.

Although California entered the United States as a so-called free state, it did tolerate the practice of slavery in the state by Southern immigrant enslavers, and it was actively complicit in various forms of post-slavery de jure racial discrimination.

Eligibility Standards

The plans differ in terms of whom they deem eligible for black reparations (see table 1, row 3). Brooks (2004) conceptually equates the demographic category of black Americans with descendants of enslaved people. This leaves the door open for blacks descended from people enslaved elsewhere to demand reparations from the U.S. government. Furthermore, without providing an independent standard for determination of who is black, exclusive reliance on a standard linking a current claimant to an enslaved ancestor also leaves the door open for persons living as white today to make a claim.

The NAARC (2015) plan extends this definition to all people of African descent, including immigrants who voluntarily entered the United States after African immigration was legalized in 1965.[9] Again, presumably, persons living as white in the present who can document African ancestry also would be eligible, further distancing the eligibility standard from a specific community of eligibility consisting of black Americans whose ancestors were enslaved in the United States.

Because the Immigration Act of 1965 gave priority to professionals and other individuals with specialized skills, it selectively enabled Africans of elevated socioeconomic status to immigrate to the United States. Among these may be, at least theoretically, some descendants of the African slave traders who sold the ancestors of many black Americans into New World slavery.

Ruling out these possibilities, the Darity and Mullen (Darity and Frank 2003, 327; Darity and Mullen 2020, 258) plan sets two eligibility criteria, a lineage standard and an identity standard. The lineage standard has it an individual must establish they have at least one ancestor who was enslaved in the United States of America.

The identity standard states that an individual must establish that they self-identified on an official document as black, Negro, African American, or Afro American for twelve years before the enactment of a reparations plan or a commission to study reparations. In sum, on these criteria, eligible recipients for reparations will be black Americans whose ancestors were enslaved in the United States. The second condition rules out people abruptly adopting a black identity simply to gain reparations' benefits.[10]

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occurred in response to the pandemic. The federal government amassed significant amounts of funds for expenditure purposes to deal with each of those crises without having any significant change in the level of taxes that people were incurring. So the federal government can do it, but states and localities cannot. Their total combined budgets at the present moment come to something less than $5 trillion. [One] bill that we've outlined is at least $14.3 trillion. So that's the incompleteness dimension. The inconsistency arises because these various state and local initiatives are uncoordinated, and they are not interwoven [n]or integrated with one another. . . . there's not a necessary degree of compatibility between them. And then finally, they're inequitable because they are not uniform. . . . eligible recipients in different communities are going to receive different types of restitution. If we indeed want to call it that. . . in fact, we would argue that these local and state initiatives are something that could have value from the standpoint of reducing the impact of the various harms that have taken place. But they do not have the capacity to essentially provide adequate compensation for the magnitude of the range of harms that have been inflicted on the victimized community" (emphasis added).

9. Even more extreme, philosopher Olúfẹ́mi Táíwò (2022) wants to absorb the black American claim for reparations into a global claim for diasporic justice for peoples of African descent for colonialism, linked to the unevenly distributed hazards of climate change.

10. On May 17, 2023, Rep. Cori Bush (D-Mo.) introduced a congressional resolution, the Reparations Now Resolution, shares similar problems (U.S. Congress 2023). Her resolution's eligibility criteria reads, "the Federal Government must compensate descendants of enslaved Black people and people of African descent." Presum-

Darity and Mullen (2020) urge a focus on black American descendants of U.S. slavery because, they argue, this is the community exposed to the long history of atrocities executed or sanctioned by the U.S. government that produced current disparities in health, wealth, employment, political participation, and treatment from the criminal justice system. They contend that this is the community whose ancestors were promised and denied forty acres land grants with intergenerational ramifications creating a debt still unpaid. This is the community that suffered the indignity and terror of legal segregation in the United States.

Furthermore, fewer than 1 percent of the U.S. black population voluntarily migrated here prior to the passage of the civil rights legislation of the 1960s (Berlin 2010). Substantial post-slavery black in-migration to the United States only took place after the 1970s. It is important that the more recent additions to the nation's black population came voluntarily to a nation with a long history of racism, unlike the ancestors of black Americans, who came in chains.

The CRTF's deliberations suggest the eligibility standard they established was intended to prioritize California descendants of American chattel slavery but also the descendants of a smaller group of free blacks prior to the abolition of slavery. The exact CRTF (2023, 1) definition is "African American Descendants of a Chattel Enslaved Person, or Descendants of a Free Black Person Living in the United States Prior to the End of the 19th Century."[11] Without a precise designation of who is African American, the CRTF criteria also open the eligibility window to persons currently living as white.[12]

Reparations Modalities

In terms of proposed reparations modalities (see table 1, row 4), Brooks's (2004, 157) plan calls for "a museum of slavery and an atonement trust fund." The atonement trust fund would benefit "every newborn black American child born within a certain period of time—five, ten, or more years" (Brooks 2004, 159). This means that not all blacks or descendants of a person enslaved in the United States would receive reparations but only some young members of that category. Presumably, this would keep costs relatively low for the federal government as reparations provider.

NAARC's (2015) plan also contains elements that are free or relatively low cost, such as "a formal apology," the establishment of a "MAAFA/African Holocaust Institute," for those who wish it "a right to return to the motherland to an African nation of their choice," an "African Knowledge Program" funds for black monuments, and criminal justice reform. Other elements of the plan potentially are costly, such as "substantial tracts of . . . public land," "resources to support major Cooperative Enterprises," "Black controlled Health and Wellness Centers, fully equipped with highly qualified personnel," education funds, funding for historically black colleges and universities and free tuition for students attending them, affordable housing, as well as funds for black public media.

The Darity and Mullen (2020) plan emphasizes the importance of a direct monetary component. They state, "While a personal check or its equivalent need not be the only form in which the program makes payments, both the symbolism and the autonomy it conveys will be

ably persons living as white today who could establish they have an enslaved ancestor or African ancestry would be eligible for reparations. In addition, this standard would include persons who have ancestors enslaved in any part of the world.

11. The presence of the word *or* following a comma produces amibiguity whether the phrase "Living in the United States Prior to the End of the 19th century" applies to "African American Descendants of a Chattel Enslaved Person." If it is not interpreted as applying, then the CRTF's criteria for eligibility can include a person whose ancestors were enslaved somewhere other than the United States.

12. Further complicating matters with respect to the use of *African American* without definition is that the term was not used in the laws establishing legal discrimination in the United States. For example, segregation ordinances referred to separation between "whites" and "negros" or "coloreds," with the latter two terms used interchangeably (see Benson 1915; PBS Learning Media for Teachers 2023).

a key dimension of a black reparations program" (265). The ancestors of many black Americans were deprived of their autonomy throughout the periods of both slavery and post-slavery discrimination.

Direct monetary payments would restore that autonomy to their descendants, albeit not necessarily in the form of a cash transfer. Darity and Mullen's (2020) plan also considers less liquid forms of money transfer than cash—transfers having more of an asset character than a sheer income supplement, such as trust funds, annuities, or other types of endowments for all eligible recipients. The key for them is the eligible recipients must have full discretion over the use of the funds.

In contrast, the CRTF (2023, 4) plan states simply, "Ultimately, the Task Force recommends that any reparations program include the payment of cash or its equivalent."

Reparations Administration

In terms of administration (see table 1, row 4), Brooks's (2004) proposed trust funds, would be managed by "reputable trust administrators selected by prominent black Americans" (159), and "help fund recipients make the right choices in schools and business opportunities" (161). This restriction smacks of paternalism and may be motivated by an internalized acceptance of ancient antiblack stereotypes.

In his expert testimony to the California Reparations Task Force (California Department of Justice 2021, 8:39–9:14 min), Brooks stated on September 23, 2021, "I am not in favor of compensatory reparations because . . . the individual can take that and go to Las Vegas to gamble it away. And that gives evidence to Chris Rock's famous quip that the only one who is going to benefit from reparations is Kentucky Fried Chicken."

Apart from denying the right of the individual recipient to do with the funds as they see fit—in other cases of reparations for members of victimized communities no restrictions have been placed on their use of the funds—no evidence supports the view that black Americans are any more frivolous with their monetary resources than any other group. In fact, the best evidence available reveals, if anything black Americans are less profligate with their money than white Americas, saving as much, if not more, than their white counterparts (Darity et al. 2018).

Although not explicitly repeated by NAARC (2015), similar stereotype-based considerations may motivate that plan's insertion of multiple levels of administrative bureaucracy between the federal government as provider and eligible recipients of African descent in the United States. First would be the establishment of a "National Reparations Trust Authority . . . comprised of a cross-section of credible representatives of reparations, civil rights, human rights, labor, faith, educational, civic and fraternal organizations and institutions" (NAARC 2015, 2). Further, an unelected "Boards of Trustees" would manage Cooperative Enterprises (5); there would be an "African American Housing and Finance Authority" (6); media funds would be "administered by the National Newspaper Publishers Association (NNPA) and National Association of Black Owned Broadcasters (NABOB)" (7); the National Parks Service would receive funds for monuments (7), and a newly founded "Black controlled Agency for Returning Citizens" would organize the process by which released prisoners would be reintegrated into society as part of criminal justice reform.

No election by eligible recipients to administrative roles is envisioned in NAARC's (2015) plan. In contrast, the Darity and Mullen (2020, 267) plan holds that "A twelve-member reparations supervisory board will be established, *elected by all those with established eligibility for the reparations program*" (emphasis in the original). The CRTF (2023, 2) envisions that the legislature charge a "recommended California American Freedman Affairs Agency . . . with processing . . . claims and rendering payment in an efficient and timely manner."

A related theme that emerges from the research of Newton and Nelsen (2024) and Davies, Jackson, and Knight (2024) is the importance of involving the victimized party early in the design and conceptualization of a redress program. In Chicago, early incorporation of victims' voices helped shape the reparations policy to have direct benefits for the victimized parties, whereas the process in Evanston may have been coopted by elites in a way that left the ultimate reparations policy narrowly ap-

plied to housing and fiscally unattainable for Evanston's most economically vulnerable black families.

How Much Is Owed?

Variance is also quite considerable in proposed amounts or in whether any estimates are provided at all (see table 1, row 6). Brooks (2004, 163) writes, "Under the capitalization approach, it would take $50,000 of investment capital [in 2004 dollars] per eligible worker" to close the black-white earnings gap. This would represent roughly $69,647 per eligible recipient in 2020 dollars (U.S. Bureau of Labor Statistics, n.d.). The NAARC (2015) proposal names no estimates; the Darity and Mullen (Darity, Mullen, and Slaughter 2022) plan estimates that $350,000 per eligible black descendant of a person enslaved in the United States will eliminate the black-white wealth gap.[13]

The CRTF's (2023) amount is more difficult to assess given that it may differ from one eligible recipient to the next based on length of residence in California. For example, $13,619 would be due per year of residence in California for health discrimination and $2,352 per year of residence in California between 1971 and 2020 for overpolicing during the so-called war on drugs. A lump sum of $145,847 would be due for housing discrimination and another of $77,000 for business devaluation. Thus, for an eligible recipient forty-nine years of age in 2020, this would be $667,331 for health discrimination plus $115,248 for overpolicing plus $145,847 for housing discrimination plus $77,000 for business devaluation, roughly equivalent to $1 million. None of the four plans has yet been considered by an actual elected body, but the CRTF (2023) plan is approaching this test with the California State Assembly perhaps as early as 2024.

Based on the comparison of the four plans, a joint plan may be envisioned as follows: with victim-centered rather than perpetrator-focused goals—only Brooks's (2004) plan centering on the perpetrating side; with the federal government as the main reparations provider—only the CRTF (2023) plan being state level; with eligibility criteria derived from a combination of Darity and Mullen's (2020) plan and the CRTF's plan, specifically, black descendants of persons enslaved in the United States or black descendants of free black persons living under permanent threat of enslavement in the United States prior to the abolition of slavery in 1865.

The modalities also could combine Darity and Mullen's (2020) and the CRTF's (2023) recommendations: a meaningful monetary component over which the recipients would have exclusive decision-making power. In terms of fund administration, the CRTF's recommended Freedmen's and Freedwomen's Bureau could be reestablished with the leadership elected by all eligible adult reparations recipients, as Darity and Mullen's plan holds. Finally, in terms of the amounts, closing the current black-white wealth gap might be a minimum demand and represent a meaningful downpayment. As the CRTF's calculations demonstrate, adding losses from individual atrocities can exceed that amount because not every black loss was mirrored by white gain. For example, pain and suffering from generations of enslavement, race discrimination, and intergenerational poverty had no corresponding white gain and therefore are not fully captured by the wealth gap. Further, in the presence of racial discrimination, black Americans are likely to have worked harder to achieve the same level of success as comparable white Americans. Any additional, compensatory black effort would have reduced the observed wealth gap below its full discriminatory level.

LOSSES TO BLACK AMERICANS FROM U.S. SLAVERY AND THE RACIAL WEALTH GAP

To complicate matters, some estimates of black losses due to slavery in the United States alone (1776–1865) exceed the racial wealth gap. The most recent Survey of Consumer Finances for 2022 (Aladangady et al. 2023) indicates the average black-white family wealth gap is $1.15 million. Given an average black family size of 3.4 persons and an average white household size

13. The $350,000 estimate is based on data from the 2019 Survey of Consumer Finances (SCF) (Darity 2021b). As we demonstrate, the estimate based on the 2022 SCF is more than $40,000 higher.

of three persons, the average per capita wealth gap by race amounts to $393,519.

Three main estimation methods have been proposed to estimate losses due to U.S. slavery alone, the price-based method (Ransom and Sutch 1990; Neal 1990; Marketti 1990), the wage-based method (Craemer 2015; Craemer et al. 2023), and the land-based method (Darity 2008; Darity and Mullen 2020). They are cautious measures because they ignore colonial slavery from 1517, when the Spanish Crown authorized the importation of enslaved Africans to what is today Puerto Rico (Asiegbu 2020), to 1775, the year before the United States declared independence from Great Britain.

The price-based method was developed in the 1990s and documented in the groundbreaking volume edited by Richard America, *The Wealth of Races* (Ransom and Sutch 1990; Neal 1990; Marketti 1990). This approach treats the price of an enslaved person as the market signal of how much an enslaver expected to gain from owning that person. However, because the market price was established through negotiations between the seller and the buyer of human property and did not reflect the views of the enslaved, this price is likely to reflect the value of slavery only to the enslaver, not to the enslaved (Berry 2017).

Price-based estimates range from $17.4 billion (Ransom and Sutch 1990) to $1.4 trillion (Neal 1990), up to $4.7 trillion (Marketti 1990), all in 1983 dollars. Further compounded at 6 percent interest, this would represent $141.8 billion, $11.4 trillion, and $38.3 trillion in 2019 dollars respectively. Divided by forty-one million black descendants of the enslaved in the United States (Tamir 2022), this would amount to $3,458 (Ransom and Sutch 1990), $278,199 (Neal 1990), and $933,953 (Marketti 1990) per eligible recipient in 2019 dollars.

The wage-based estimation method (Craemer 2015; Craemer et al. 2023) uses U.S. Census (1975) records about the enslaved population measured every ten years from 1790 to 1860, and historical free-labor-market hourly wages from 1790 ($0.02) to 1860 ($0.08) provided by Lawrence Officer and Samuel Williamson (2019). It uses this information to estimate the enslaved population in each year from 1776 to 1860 and computes the number of hours per year that were available to enslavers by multiplying the annual slave population by twenty-four hours a day and 365 days a year.

This amount is then multiplied by the tiny hourly wage rate in each year and compounded by either 3 percent interest (not making up for inflation) or 6 percent interest (the interest rate specified in the sales contract of Georgetown University when it sold 272 enslaved in 1838 to save the university from financial ruin). The resulting totals are at 3 percent interest $19.1 trillion in 2019 dollars, and at 6 percent interest $6.6 quadrillion. The corresponding per recipient payments would be $465,854 or $161 million in 2019 dollars respectively. This computational example illustrates the central role the interest rate plays in estimating losses over such long periods.

Alternatively, loss of freedom due to slavery in the United States can be calculated based on the reparations Japanese American World War II internees received in 1988. The Civil Liberties Act of 1988 provided each surviving ex-internee $20,000 per person and an apology letter from the U.S. president (National Archives 2017). Internment lasted for three years, from 1942 to 1945, and did not involve slave labor. Hence reparations compensated for lost freedom implicitly was a rate of about $0.76 per hour in 1988 dollars.

The purchasing-power equivalent of that amount can be derived using Morgan Friedman's (2019) inflation calculator, and the total hours available to enslavers can be multiplied by the hourly compensation for lost freedom. At only 3 percent interest, this would yield $35.8 trillion in 2019 dollars, and at 6 percent a staggering $17.4 quadrillion. This would work out at 3 percent interest to $874,139 per person and at 6 percent to $424 million per person for black Americans. What would still be missing is compensation for lost opportunities to accumulate capital, as well as pain and suffering (Swinton 1990).

The land-based estimation method calculates the current value of the forty acres (and a mule) promised to the freedmen and freedwomen. Land as restitution was the basis for Sojourner Truth's demand for land redistribution (Araujo 2019). Businessman Dempsey Travis developed the proposal for a new Home-

stead Act in 1970 as a form of reparations based on the current land value of forty forty-acre plots (Allen 1998).

Darity (2008, 662) writes, "The unfulfilled promise of 40 acres per family . . . provides a means to gauge the magnitude of reparations owed to the descendants of those enslaved." He estimates the price of land in 1865 at about $10 per acre (Mittal and Powell 2000) and notes that "an allocation of 40 acres to a family of four would imply 10 acres per person, hence a value of $100 per ex-slave in 1865."

If we also take the total number of formerly enslaved persons who were emancipated at the close of the Civil War at four million persons, forty million acres of land valued at $400 million should have been distributed to them in 1865. Compounding this sum from 1865 at 6 percent interest to 2019 results in $3.156 trillion in 2019 dollars. However, white settler families were promised and given four times the amount, 160 acres, by the Homestead Act of 1862.[14] Thus the raw estimate must be increased by a factor of four to $12.6 trillion with outlays of $307,921 for each of the estimated forty-one million eligible recipients (Tamir 2022).

However, missing from the ledger would be a host of post-slavery atrocities that could be put on the register as well: the costs in lives and property of the one hundred white terrorist massacres, black excess mortality due to disparities in the healthfulness of living conditions, discrimination in homeownership access and home equity, differential access to quality medical care, employment discrimination, unequal education, and the sheer indignity of segregation.

Laws and policies, ostensibly in place for the general social benefit, have been mobilized for one-sided gains for white Americans. Eminent domain and predatory tax laws have been used widely to expropriate black property and transfer it to white ownership and profit, particularly high-value coastal properties (Kahrl 2016, 2024).

Contract selling schemes produced by the denial of adequate credit to potential black homeowners under redlining conditions served as a mechanism for extraction of black income by white real estate brokers. More often than not, the brokers ultimately retained ownership of the properties and could resell them for another round of exploitation (Satter 2010; Coates 2014). In the aftermath of official redlining, the federal government's program of guaranteed mortgage support in urban areas under the auspices of the Department of Housing and Urban Development was manipulated to produce sweeping numbers of foreclosures in black communities (Taylor 2019).

Related to recent federally funded and sanctioned discrimination against black Americans, Ann Pfau and her colleagues (2024, this volume, issue 2) embark on an ambitious archives-based analysis of the financial harms suffered by tenants and property owners displaced by local government agencies in the process of implementing urban renewal programs. These harms include inadequate reimbursement payments, lost business and rental income, and higher post-relocation housing costs. In the case of homeowners who became tenants, the authors estimate the present-day market values of individual properties and compare those estimates with the compensation received by displaced occupants. Their project is a roadmap for other communities looking to document and remedy the damages caused by urban renewal.

One difficulty with the enumeration and adding up strategy is the lack of sufficient data to provide a comprehensive calculation for each category (Darity, Mullen, and Slaughter 2022), particularly for loss of life and property during the course of mass killings and violent destruction of black communities. A second difficulty is the question of whether living descendants merit compensation for atrocities they did not experience directly, particularly the atrocity of slavery.

14. Keri Merritt (2016) reports that 1.6 million white families received 160 acres land patents under the Homestead Act of 1862, approximately 10 to 12 percent of the U.S. white population by the first two decades of the twentieth century. In contrast, little more than ten thousand black people received land patents under the short-lived Southern Homestead Act 1866 and the original Homestead Act, less than 1 percent of the four million persons emancipated at the end of the Civil War.

It is justifiable for living descendants to receive compensation for the intergenerational impact on their lives of the brutality imposed on their ancestors. Still, the current value of land not received by the freedmen and freedwomen does not encompass the full range of factors generating the contemporary racial wealth gap. Instead, one can go directly to the current disparity itself to compute the size of a reparations bill.

Distributed to every living black American descendant of an enslaved person in the United States, this amount should suffice to eliminate the intergenerational wealth effects of past atrocities, including the long-term effects of U.S. slavery. If roughly 85 percent of the nation's black population of approximately forty-seven million persons consists of individuals who have at least one ancestor who was enslaved in the United States (Tamir 2022), an estimated forty-one million black Americans would be due about $16.1 trillion.

Elizabeth Wrigley-Field (2024, this volume, issue 2) argues that the legacy of slavery and Jim Crow was not just lost income and wealth, but also lost time in the form of decreased life expectancies for black Americans. She empirically estimates the relationship between lifespan and measures of slavery and Jim Crow intensity for black Americans and argues that any reparations program should account for differences in lifespan between black and white Americans.

Wrigley-Field's (2024) focus on the racial longevity gap provides an intriguing alternative to the racial wealth gap as a summary measure for computation of the size of the reparations bill. A rough and ready approach to estimation of the amount due for reparations using her concept follows: conservatively, use as a benchmark $10 million as the value of a statistical life.[15]

If the average black lifespan is seventy-one years, then the average value of a black year of life will be $140,845. If white longevity runs seventy-six years, the comparative loss in black longevity is five years. Five years multiplied by $140,845 yields a payout per eligible black recipient of $704,255. With an estimated forty-one million black American descendants of persons enslaved in the United States, the total bill will come to about $29 trillion.

Using closing the black-white wealth gap as the goal post, Asher Dvir-Djerassi (2024, this volume, issue 3) uses counterfactual historic simulations to evaluate the ability of race-neutral baby bonds—wealth endowments bestowed at birth and financed through a progressive wealth tax—to close the wealth gap over time. Although race-neutral policies are by definition not reparations, they may be more politically feasible to enact and, therefore, important to study.

Dvir-Djerassi's simulations demonstrate that race-neutral baby bonds cannot close the mean racial wealth gap over a reasonable time scale. They can, however, virtually close the median racial wealth gap if the wealth endowment is at least $50,000 for the lowest-wealth children and graduated downward at lower endowment amounts for higher wealth families.

However, Darity and Mullen (2021) argue that elimination of the mean racial wealth gap should be the target for any reparations program to properly embody the intergenerational legacy of past atrocities against black Americans. As Dvir-Dejrassi (2024) demonstrates, baby bonds would have to be redesigned to target equalization of wealth at the national mean to close the wealth gap under race-neutral arrangements.

HOW TO PAY THE DEBT

Who should be responsible for paying the debt? Darity and Mullen (2022) argue that only the federal government has the capacity to meet the task.

A suitable plan for reparations should have a payment scheme that is sufficient, at least, to eliminate the black-white disparity in wealth, minimize the inflation effect, and minimize any new immediate or deferred tax burden. That combination of objectives can only be achieved by the federal government, particularly because as sovereign currency issuer only the federal government can spend huge sums of money without being constrained by tax rev-

15. This figure is actually very conservative (see Consumer Product Safety Commission 2023).

enue—unlike states and localities. The barrier to additional federal spending is the inflation risk, which can be mitigated by spreading the payments out across several years—no more than a decade—and by giving recipients, at least in part, payments in the form of less liquid assets like trust accounts or annuities (Darity and Mullen 2020, 266–67).

In this volume, Trina Shanks and colleagues (2024, issue 3) argue that evidence from the structure of child development accounts shows that reparations payments can be delivered to eligible recipients of all ages (not just children) through structured savings plans with automatic enrollment that promote asset growth and considerable autonomy for the recipients. The contribution of their article is to demonstrate a practical delivery system for cash reparations payments.

The form of reparations that is most appropriate is direct payments to eligible recipients, though not necessarily solely cash transfers. Ultimately, individual recipients should have full authority over the use of the funds. This has been the case for payments to other communities subjected to collective victimization internationally. Conditions should be no different for black American reparations when the bill finally is paid. Any other route would be unwarranted paternalism and an insult to the recipient community.

THE FUTURE

What is the future of black reparations in the United States? Ultimately, it will have to be decided by legislative bodies, which, in turn, are heavily influenced by public opinion. Two articles in this volume, by Jesse Rhodes and colleagues (2024, issue 3) and by Kamri Hudgins and colleagues (2024, issue 3), investigate public opinion toward reparations. Rhodes and colleagues examine the historic trajectory of public opinion on reparations and present evidence on contemporary public opinion using four nationally representative surveys administered between 2021 and 2023. They find that in recent polls between 14 percent and 28 percent of white Americans support cash reparations, up from a tiny 4 percent in 2000 (Dawson and Popoff 2004). There appears to be momentum with regard to the least popular form of reparations—cash payments (but see Craemer 2009a, 2009b). The political feasibility of reparations programs will depend on how fast the momentum in favor of reparations can build. This is notoriously difficult to predict, but examples such as the relatively sudden public opinion swing from majority opposition to majority support for gay marriage suggest that public opinion can change on a dime.

Once white non-Hispanics cease in a few decades to represent the majority in the U.S. electorate, a federal black reparations program may become more electorally feasible. This depends on whether the black reparations movement manages to build meaningful coalitions with other historically excluded nonwhite groups for whom black reparations could serve as a political precedent.

On the other hand, controlling a majority of the electorate does not guarantee political power, as white reparations opponents, who are still likely to control a disproportionate share of U.S. resources continue to lobby for disenfranchising policies (restricting access to the franchise, gerrymandering, and so on). Thus a federal program may not become feasible even after white non-Hispanics have become a minority.

Will local and state examples like those in Detroit, Evanston, and California set the course for other regions to follow? Rhodes and colleagues (2024) contend that "reparations policies may have considerable prospects in states and communities where Democrats—backed by progressive and racially liberal public opinion—are politically dominant." Will these local and state initiatives ultimately lead to federal legislation by example, or will they be treated as sufficient, removing the need, in many eyes, for federal action? If federal action is the next step, then how will public pressure effectively activate congressional action? We do not have the answers to these questions, but we can speculate on a few likely outcomes based on recent events.

State and local commissions and task forces on reparations are being formed and empaneled; this tendency is not dissipating. In addition to the local studies addressed in this volume, the San Francisco Board of Supervisors recently recommended $5 million payments to

every eligible black American (Hersher 2016). This came on the heels of the California Reparations Task Force submitting its report to the State Assembly.

Additionally, the city of St. Paul, Minnesota, recently appointed a committee called the St. Paul Recovery Act Reparations Commission to examine racial injustices in the city. Once payouts begin, local and state initiatives will find that they are incapable, singly or collectively, to meet bills of $29 trillion, or even a "mere" $16.1 trillion. The amounts proposed in San Francisco and in the California Task Force's report appear to be far beyond the ken of either their respective municipal or state resources.

States and localities may, finally, turn to the federal government, where they are likely to encounter substantial opposition; however, opposition may be susceptible to accurate information, as Hudgins and colleagues (2024) suggest in this volume. The authors use a representative survey of Detroiters in 2022 and a nonrepresentative national survey administered between 2020 and 2022 to examine attitudes toward reparations. They find a link between an awareness of racial inequality and support for reparations policies, suggesting that public education on racial disparities may increase the feasibility of a reparations program. Thus, education on existing racial disparities in intergenerational wealth, income, health, homeownership, and education may prove crucial to effecting a federal black reparations program.

A study undertaken by Michael Kraus and Chiyei Vinluan (2023) indicates that Asian American support for black reparations increases when Japanese American exposure to mass incarceration during World War II and their subsequent receipt of redress is invoked. This suggests that education about the record of restitution directed at one's group may stimulate greater approval for "reparative economic justice" for others. Reparations have appeared prominently in political campaigns over the last few years, confirming the relevance of this issue on contemporary national policy platforms. Recent developments provide clues to future debates and possible outcomes. It is likely that the fight for reparations will continue to escalate.

Morally and economically equitable solutions may gather momentum even if they seem politically and fiscally less than feasible at a given moment. This was true for the abolition of slavery at the height of its profitability, and for the ban of de jure Jim Crow discrimination as a result of the civil rights movement of the 1960s. Whether black reparations will join these historical examples remains to be seen.

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I

Defining Black Reparations: Content, Impact, and Eligibility

Normalizing Reparations: U.S. Precedent, Norms, and Models for Compensating Harms and Implications for Reparations to Black Americans

LINDA J. BILMES AND CORNELL WILLIAM BROOKS

Paying reparations to Black Americans has long been contentiously debated. This article addresses an unexamined pillar of this debate: the United States has a long-standing social norm that if an individual or community has suffered a harm, it is considered right for the federal government to provide some measure of what we term "reparatory compensation." In discussing this norm and its implications for Black American reparations, we first describe the scale, categories, and interlocking and compounding effects of discriminatory harms by introducing a taxonomy of illustrative racial harms from slavery to the present. We then reveal how the social norm, precedent, and federal programs operate to provide victims with reparatory compensation, reviewing federal programs that offer compensation, such as environmental disasters, market failures, and vaccine injuries. We conclude that the government already has the norm, precedent, expertise, and resources to provide reparations to Black Americans.

Keywords: reparations, funding mechanisms, compensation, reparatory compensation

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 Bilmes, Linda J., and Cornell William Brooks. 2024. "Normalizing Reparations: U.S. Precedent, Norms, and Models for Compensating Harms and Implications for Reparations to Black Americans." *RSF: The Russell Sage Foundation Journal of the Social Sciences* 10(2): 30–68. https://doi.org/10.7758/RSF.2024.10.2.02. We are indebted to the work of scholars from many disciplines, including economics, medicine, law, political science, sociology, history, urban planning, and other fields who have meticulously studied and identified the costs of discrimination across various functional areas. We wish to especially thank the following scholars who graciously contributed their expertise: William A. Darity, A. Kirsten Mullen, David Ellwood, Jane Mansbridge, Khalil Gibran Muhammad, Megan Ming Francis, Christopher Jencks, Randall Kennedy, Afreen Siddiqi, Paul Sullivan, Paul Farmer, and Hong Qu. We also thank our students who assisted in this research: Hillary Anderson, Micah Burbanks-Ivey, Yahya Chaudhry, Robert Clinton, Jessica Kaushal, and Stevie Olson. Direct correspondence to: Linda Bilmes, at linda_bilmes@hks.harvard.edu, Harvard University, Cambridge, MA, United States; Cornell William Brooks, at cornellwm_brooks@hks.harvard.edu, Harvard University, Cambridge, MA, United States.

EXECUTIVE SUMMARY

Studies have documented, and in some instances attempted to quantify, the harms inflicted on Black Americans over the past four hundred years from slavery through its direct and indirect impacts. This article examines major racial harms precipitated or aggravated by actions involving the federal government and argues that there is a moral case, societal norm, and governmental precedent for paying reparations for these harms and the resulting racial wealth gap.

The article examines the harms through the lens of a novel framework: in the context of the federal government's policy norm of providing what the authors term reparatory compensation to many segments of the population, for varied harms, throughout U.S. history. These compensation mechanisms demonstrate that financial restitution for harms to victims is a widely accepted, utilized, and institutionalized practice of federal government with centuries of precedent. The article raises a unique question: if reparatory compensation is common for government-recognized harms, why do we not compensate the massive racial harms suffered by Black Americans? What if Americans considered racial harms to Black Americans in the context of the many laws and programs enacted to address other profound harms? What if Americans endeavored to address the racial harms to Black Americans equipped with the same norm, precedent, and fiscal imagination applied to many nonracial harms over so many decades? The existing mechanisms, with their diverse funding streams and variety of ways for compensating harms, can serve as precedent, models, and norms for reparations for racial harms.

Reparations are surprisingly commonplace practices in the federal government's role of compensating harms. The United States has paid many forms of reparations throughout its history and has implemented hundreds of programs that compensate individuals and their dependents for various harms. Even though the use of the term reparations is not commonly applied to government programs, reparatory compensation or providing financial restitution for recognized harm is quite common.

A majority of Americans currently oppose reparations for slavery's descendants, but support for it is growing, especially among young people. Tracking polls show overall support for some forms of reparations by all voters has risen from 14 percent in 2002 to around 30 percent in 2021 (Blazina and Cox 2022; University of Massachusetts 2023; Younis 2019) and up to 38 percent of likely voters (Rasmussen Reports 2022). This figure rises to 57 percent for those aged eighteen to twenty-nine (University of Massachusetts 2023). Across all demographics, polls show opposition is due primarily to doubt over government's ability to administer reparations, feasibility of valuing slavery's harms, and the belief that Black Americans are undeserving or are already treated equally (University of Massachusetts 2023). However, public opinion is still evolving. As John Skrentny has pointed out, Americans today support ideas for redressing harms that were historically opposed. For example, he cites "veterans' preference" in government employment, which was resisted initially on the grounds that it ran counter to the idea of meritocracy, but its legitimacy is now "beyond question" (Skrentny 1996).

By grounding arguments for reparations in the long-standing norm, precedent, and practice of reparatory compensation, we address these objections by demonstrating that government already administers and funds many reparatory compensation programs for diverse nonracial harms; such programs already value complex harms; and racial harms are interrelated and compound over time into the present leaving Black Americans unequal—and deserving today. These findings confirm what government does and can do and are uniquely persuasive for the public debate. Finally, Black Americans bear what we term an "asymmetric evidentiary burden," that is, having a greater responsibility to prove harms and acceptance of remedies than non-Black groups through polling and other means, relative to other groups who now receive reparatory compensation. We plan to conduct further survey research to understand how to better convey to Americans the current widespread use of reparatory compensation presented in this article.

THE CONCEPT OF REPARATIONS

The international legal basis for reparations is enshrined in international human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (United Nations 1978), the International Convention on the Elimination of All Forms of Racial Discrimination (United Nations 1970), and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations 1984). Many international programs have adopted the United Nations (UN) principles for reparations programs (UNGA 2005). These include the following:

> Cessation, assurances, and guarantees of nonrepetition: the idea that the harms will cease (whether by legal changes or administrative guarantees) and not recur in the future.
>
> Restitution and repatriation: the principle that there should be an attempt to restore victims to their "original state" prior to the harms occurring.
>
> Compensation: the inclusion of monetary restitution if true restitution is not possible.
>
> Satisfaction: the idea that there is a moral requirement to restore the victim's sense of dignity.
>
> Rehabilitation: healing to end the lasting effects of the harm (e.g., the implementation of truth and reconciliation commissions to give voice to victim narratives).

The discussion of paying reparations to Black Americans frequently invokes comparisons with reparations paid to victims of the Holocaust and payments to Japanese Americans incarcerated in internment camps during World War II (Dymski 1999). A key finding of this article is that these two examples, though compelling and illustrative, represent only a small subset of government reparatory compensation programs. U.S. laws and rules governing compensation programs show that Congress has long sought to provide some measure of restitution, compensation, and rehabilitation to those who have suffered harms that are largely beyond their control. These laws reflect the breadth of elements in the United Nation's definition of reparations.

The United States has largely focused on compensation. Congress has established programs to compensate or assist victims of certain circumstances, including negligence, terrorism, market fluctuations, personal injuries, trade policies, corporate bankruptcies, and acts of God such as crop failures and environmental disasters, as well as paying reparatory compensation as redress for racial harms in two laws enacted for compensation to World War II incarcerated Japanese Americans (Lister 2020).

The programmatic scope, financial scale, and number of harms addressed, the diversity of victims compensated, and long existing compensatory mechanisms demonstrate that the U.S. government not only is capable of administering programs of reparatory compensation for harms but also is experienced in doing so. This article's taxonomy and audit call into question the presumed impracticality of compensating victims of the continuing harms of slavery.

TAXONOMY OF ILLUSTRATIVE HARMS AFFECTING BLACK AMERICANS

Although slavery ended more than 150 years ago, the long-term effects of the brutal institution have meant a legacy of interrelated ongoing harms. The assumed distance between the slavery of the past and the present conditions of Black Americans, the documented breadth of racial harms experienced by Blacks since 1619, and the painful depth of those harms have been used to argue that reparations are incalculable, impractical, and if not impossible to administer, then too expensive. To address these objections, it is essential to introduce a taxonomy of illustrative harms that spans the types and variety of harms over time. This taxonomy directly addresses the question of whether slavery and the legal iterations of slavery (e.g., the convict leasing system, or "apprenticed" children) were that "long ago." Moreover, both the categorization of the harms and the interactivity of the harms provide the ways to calculate, in some cases, the quantifiable aspect of the harms. Last, the taxonomy of these illustrative racial harms provides the means by which to demonstrate the United

States is already providing reparations for a similarly wide range of harms through federal programs. Indeed, many of the harms against Black Americans fall into the broad categories of harm for which the government frequently compensates, such as personal injury, loss of wages, livelihood, housing, training, and access to economic opportunities. Specifically, the taxonomy traces many of the harms against Black Americans and describes government actions, inactions, legal decisions, and direct and indirect policies from slavery through the twenty-first century.

Our taxonomy illustratively, not exhaustively, describes complex, interlocking, and compounding racial harms to Black Americans spanning centuries. These categories of racial harm include: housing; wages, employment, and labor markets; education, criminal justice, health care, the franchise, and violence. Each broad category of racial harm represents specific harms to Black American bodies, opportunity, and wealth. We examined each category of racial harm, but in this article we focus on housing, education, and wages, employment, and labor markets because they most closely align with harms addressed by reparatory compensation programs.

INTERRELATEDNESS OF HARMS

The harms set forth in the taxonomy span not merely the arc of American history but also the lives of Black people, families, and communities. These harms are not isolated and freestanding but correlate, interact, and compound in ways that have quantifiably devastated lives, livelihoods, wages, businesses, property, health, and homes over decades into the present moment. The replication and persistence of categorically unequal treatment is sustained as a form of "durable inequality" (Tilly 1998), where discriminatory practices normalized the racial separation that perpetuated racial injustice and inequality (Bonilla-Silva 2010).

For example, at various points during the period of enslavement it was illegal to teach Black people to read and write (Span 2005). In the immediate aftermath of slavery, Black Americans achieved literacy in the face of violence and state-designed inferior and segregated schools. Indeed, Blacks in but a few years trained teachers, founded schools, created literary societies, published newspapers, and created ways of educating themselves using the scraps of White supremacy (Bell 1992, 2008; Givens 2021). Despite these heroic efforts, segregated and inferior schools relegated many Blacks to agricultural and domestic work. State-sanctioned segregated education kept Black people in the lowest paid vocations. For newly freed Blacks, this meant continuing the only line of work they had ever known— agricultural and domestic work. When Social Security was adopted in 1935, it explicitly excluded these low-wage occupations where the overwhelming majority of Blacks were employed (Ray and Perry 2020). Black Americans today suffer from income disparity as the direct result of multiple actions during the twentieth century, which in turn evolved from earlier harms. The compounding of social, legal, private-sector, and public discrimination is a distinguishing feature of the harms against Black Americans.

HARMS RELATED TO HOUSING

Housing is the most important asset for the vast majority of American households, representing approximately half of household net worth (Iacoviello 2011). Homeownership protects and cultivates the generation of wealth. Homeowners can borrow against home equity to finance investments, and profits derived from homeownership can be passed to the next generation. Homeownership is also the greatest driver of racial wealth disparities (Shapiro, Meschede, and Osoro 2013). Housing discrimination can be separated into two categories: discrimination in access (sales and rentals) and discrimination in lending. Since emancipation, both forms of discrimination have ranged in their overtness, purported race-neutrality, and regime of private and public enforcement (Reina et al. 2020; Schwemm 1990).

Before federally subsidized mortgage lending became a prime driver of homeownership, the Homestead Acts, which began a few years prior to the end of slavery and continued for decades after slavery, awarded frontier land to Americans for little more than a filing fee. Black Americans were effectively excluded from the acts, which provided valuable land and the

foundation for intergenerational wealth to White Americans. More than 1.6 million White families became landowners as a result of the acts but only between four thousand and 5,500 Black American claimants received land patents from the Southern Homestead Act[1] (Merritt 2016). As of 2000, some forty-six million people could trace their ancestry to the original homesteaders, confirming the act's role in creating intergenerational wealth among White Americans (Merritt 2016).

Despite obstacles, Black Americans acquired 15 million acres of land in the South between emancipation and 1910 through private purchases (Mitchell 2001) in the face of unrelenting violence and discrimination. Yet Black ownership of farmland declined to 3.9 million acres by 2017 due to "outmigration; voluntary sales; foreclosures; discriminatory lack of access to capital and credit; illegal takings; purposeful trickery and withholding of legal information; actual or threatened violence; and various forms of racism and discrimination by individuals, organizations, and government agencies" (Schelhas, Hitchner, and McGregor 2019, 20). Amid the segregation-driven dearth of Black lawyers, the lack of wills among Black farmers has resulted in heirs' property, which is tenancy-in-common inherited land passed on intestate, without clear title, typically to family members. Heirs' property is vulnerable to undervaluation and loss through tax or forced partition sales. In addition, the absence of clear title resulted in heirs' property owners being unable to use the land as collateral and ineligible for government programs. The U.S. Department of Agriculture estimates that as of 2017, 1.6 million acres valued at $6.6 billion were held as heirs' property in the 365 demographically defined Black Belt counties of the South (Bailey et al. 2019, 9).

Until the middle of the twentieth century, housing discrimination predominately took the form of overt acts of segregation. Prior to 1917, state-mandated residential zoning prevented Black Americans from purchasing homes within neighborhoods preserved for Whites. In 1917, the Supreme Court found in *Buchanan v. Warley*[2] such zoning to be unconstitutional because it interfered with property rights without due process of law (Karst 2000). State and local communities subsequently bypassed the prohibition of race-based zoning through creative measures, sometimes creating residential zoning income restrictions, but more commonly by establishing *private* racial covenants. Racially restrictive covenants were written into deeds and prevented White homeowners from selling, renting, or transferring title to Black Americans (Brooks 2011).

An estimated 80 percent of suburbs developed in the 1930s and 1940s contained racially restrictive covenants (Kaplan and Valls 2007). Even after the U.S. Supreme Court held racially restrictive covenants to be unenforceable in 1948 in *Shelley v. Kraemer*,[3] in the wake of fierce litigation and activism (Gonda 2015), they continued to be written into deeds as unenforceable deterrents to desegregated neighborhoods. Nevertheless, these legally unenforceable covenants continued to send market signals to the racially excluded (Brooks 2013). After the state's official role in enforcing segregation weakened, private and local acts of violence and terrorism continued to be used to prevent residential desegregation. Indeed, the Fair Housing Act[4] was only passed by Congress in 1968 after Dr. King was assassinated and cities were literally burning in flames of civil unrest (Massey 2015).

The Housing Act of 1934[5] and the creation of the Federal Housing Administration (FHA) institutionalized a new housing finance system and spurred an increase of homeownership for White Americans. Explicit and implicit racial systems built into the FHA loan system pre-

1. An Act for the Disposal of the Public Lands for Homesteads Actual Settlement in the States of Alabama, Mississippi, Louisiana, Arkansas, and Florida (Southern Homestead Act), Pub. L. No. 39-127, 14 Stat. 66 (1866).

2. *Buchanan v. Warley*, 245 U.S. 60 (1917).

3. *Shelley v. Kraemer*, 334 U.S. 1 (1948).

4. Enacted as Titles VII–IX of the Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73.

5. National Housing Act of 1934, Pub. L. No. 73-479, 48 Stat. 1246.

cluded most potential Black homeowners from receiving FHA-insured loans and created the system known today as redlining (Kaplan and Valls 2007; Rothstein 2017). The FHA developed risk criteria for insuring loans, and the FHA loan underwriting manual made explicit statements endorsing segregation and racially restrictive covenants. It prohibited "the occupancy of properties except by the race for which they are intended" and explained that economic assessment of properties should be lowered "by threatening or probable infiltration of inharmonious racial groups" (Federal Housing Administration 1938). White neighborhoods were consistently awarded the highest rankings, while Black or integrated neighborhoods consistently received the lowest ratings and became uninsurable (McKenna 2008; Kaplan and Valls 2007).

FHA's preference for financing single-family residential housing, as opposed to the mixed business or multifamily residential housing favored in cities, further restricted FHA-insured loans to White suburbs. Even if Black World War II vets could apply, the Servicemen's Readjustment Act[6] (G.I. Bill) adopted FHA-like loan criteria and risk assessments, preventing most neighborhoods available to Blacks from qualifying. Moreover, Black veterans lacked access to formal and informal networks disseminating information about G.I. Bill benefits, and they were barred from veterans' organizations such as the American Legion, the Veterans of Foreign Wars, and the Disabled American Veterans (McKenna 2008). These provisions, combined with widely practiced discrimination, effectively prevented many Black veterans from accessing the G.I. Bill's housing benefits, and perpetuated substantial housing access inequality. In 1946 and 1947, Veteran Administration G.I. mortgages accounted for more than 40 percent of total mortgages issued, but few went to Black veterans (Katznelson 2005). Despite nearly 8 percent of World War II veterans being Black, "accounting for approximately 1,154,486 Black American veterans, fewer than 30,000 or 2.6 percent ever benefited from the homeownership provisions of the GI Bill" (Woods 2013, 411).

Although the official practice of racial discrimination in housing was banned by the Fair Housing Act, rental and sales discrimination, redlining and predatory lending still created barriers for continued access to housing and lending for Black Americans. The force of the 1968 act was diluted by weak enforcement and a legal precedent that requires evidence of both disparate impact and purposeful discrimination for violation of equal protection of the law (Mura 2009). The act banned many iterations of public actions and private practice that excluded Black Americans from housing over decades. Yet, the U.S. Department of Housing and Urban Development (HUD), which was charged with the administrative enforcement of the act, was so limited that even when its own investigations proved acts of blatant discrimination against a Black victim, the agency could do little more than ask the Justice Department to investigate further. HUD could not force compliance on discriminators, grant any remedy, assess damages, discontinue ongoing discriminatory practices, or penalize the lawbreaker in any way. Even after a referral to the Justice Department for possible prosecution, the attorney general could act only if there was evidence of "a pattern or practice" of discrimination, or the alleged act of discrimination raised an issue "of general public importance" (Massey 2015, 576). Considering the discrimination in federally subsidized housing lending, HUD's weak fair housing enforcement powers, and the heavy enforcement burdens placed on Blacks facing housing discrimination, bad was made worse by the fact the act initially took no action against mortgage lending (Massey 2015).

Today, the relationship between discriminatory FHA risk assessments and race remains little changed. Nationally, nearly two-thirds of neighborhoods deemed hazardous are inhabited by mostly minority residents (Jan 2018). Ninety-one percent of the areas classified as best under the explicitly discriminatory FHA risk assessments of the 1930s remain middle-to-upper income today, and 85 percent of them are still predominantly White (Jan 2018). Black Americans who obtain loans are more likely to receive predatory subprime loans—that are

6. Servicemen's Readjustment Act of 1944, Pub. L. No. 78-346, 58 Stat. 284.

more expensive, are more prone to default, and have significantly higher rates of foreclosure (Galbraith 2008; Jan 2018). The terms of the loans themselves may raise the likelihood of default.

A HUD study of housing discrimination indicated that borrowers in Black neighborhoods are up to five times more likely to receive subprime loans, even accounting for income, and that borrowers in upper-income Black neighborhoods were twice as likely as homeowners in low-income White neighborhoods to refinance with a subprime loan (Turner et al. 2013). Foreclosures in predominantly Black neighborhoods rise in tandem with increases in subprime lending. Mechanisms to prevent housing lending discrimination employed by HUD and the Consumer Finance Protection Bureau have been unable to curb predatory lending.[7] The effects of housing discrimination are reproduced in a vicious cycle: discrimination creates social and economic barriers for Black Americans, and the resulting hardships fuel prejudice that leads Whites to associate minorities with the very neighborhood deterioration caused by the racial discrimination of White people (Yinger 1995; Korver-Glenn 2018). If housing is a source of intergenerational wealth, then what of the wealth denied to those enslaved-descendant Black families by private discrimination unchecked, under-prosecuted, and unpunished by weak or absent federal enforcement?

HARMS RELATED TO EDUCATION

On September 9, 1739, approximately one hundred enslaved people in the colony of South Carolina rebelled against the plantation owners who held them in bondage, killing men, women, and children as they attempted to escape in search of freedom (Smith 2005). This event, the Stono Rebellion, prompted the state's General Assembly to pass the Negro Act of 1740, one of the earliest pieces of legislation to explicitly outlaw the education of Black people, which formed the blueprint for later laws prohibiting the education of Black people.

Because many states outlawed education for enslaved Blacks and erected barriers to education for free Blacks, after the end of the Civil War 80 percent of Black Americans were illiterate (Elliott 2006). As they sought to gain the education they were denied, newly freed Blacks encountered another obstacle in segregation. In 1850, the Massachusetts Supreme Judicial Court ruled in *Roberts v. City of Boston*[8] that local officials could decide to segregate schools (Long Road to Justice, n.d.). The *Roberts* decision was cited as precedent upholding racial segregation in 1896 in *Plessy v. Ferguson*,[9] which established the doctrine of "separate but equal."

It took more than one hundred years after the *Roberts* decision before *Brown v. Board*[10] held that separate is inherently unequal in 1954. In the intervening century, Black Americans continued to be denied access to education. The G.I. Bill again played an important role, providing federal funding for vocational and university education to servicemembers returning from World War II. However, the educational benefits of the G.I. Bill were administered at the state level, which meant that states with de jure segregation did not act in accordance with the race-neutral language of the bill. In the Jim Crow South, local authorities denied benefits to Black veterans who would otherwise qualify, and Black servicemen could not attend most educational institutions in southern states (Katznelson 2005). Northern universities, though marginally integrated, had quotas and other measures that restricted the admission of Black students (Katznelson 2005). In most cases, the only options for these returning servicemembers were historically Black institutions. Most of these universities were located in Southern states, were discriminatorily funded, and were consequently small, chronically short of money, and unable to accommodate the increasing number of

7. The bureau's efforts to reduce predatory lending have been thwarted (see Pierson 2023).

8. *Roberts v. City of Boston*, 59 Mass. (5 Cush.) 198 (1850).

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

10. *Brown v. Board of Education*, 347 U.S. 483 (1954).

Black servicemen seeking college educations (Katznelson 2005).

Without graduate programs and professional schools, Blacks restricted to black colleges had limited access to higher paying professions like law, medicine, and dentistry that might have served as ladders to the middle class. It is widely acknowledged that the G.I. Bill exacerbated rather than narrowed the economic and educational differences between Blacks and Whites (Turner and Bound 2003).

In 1954, one decade after the passage of the G.I. Bill, the Supreme Court of the United States ruled that segregated schools were inherently unequal in the landmark *Brown v. Board* decision. This historic case overturned the doctrine of separate but equal. Even though this was a significant achievement, school segregation was codified and had been practiced for well over a hundred years and would not be easily undone. The decision was met with massive resistance in several states (NAACP Legal Defense Fund, n.d.). Efforts to integrate schools were met with violence and White flight to private schools (Jayapal 1987).

In recent decades school segregation has increased (Orfield and Jarvie 2020). Most efforts to integrate schools stopped after a 1991 Supreme Court decision, *Board of Education v. Dowell*,[11] allowed schools to be released from court monitoring on desegregation so long as the schools made a "good faith effort." As of 2012, 15 percent of Black students, and 14 percent of Latino students, attend "apartheid schools" where Whites make up 0 to 1 percent of the enrollment (Orfield, Kucsera, and Siegel-Hawley 2012). Unequal funding for schools that serve Black students continues to plague K–12 education. In 1973, the Supreme Court held in *San Antonio Independent School District v. Rodriguez*[12] that there was no constitutional violation in unequal school funding and ruled that education is not a "fundamental" right (Library of Congress 2014). In higher education, affirmative action policies that seek to bring more students of color into colleges and universities have been continuously under attack since their inception and finally ended after the Supreme Court's 2023 *Students for Fair Admission v. Harvard*[13] decision (Jencks 1985; Torres 2019).

Because of residential segregation, Black Americans have been disproportionately exposed to lead through deteriorating lead paint, dust and other lead-based products, which has deleterious effects on learning (Aizer et al. 2018; Feigenbaum and Muller 2016; Muller, Sampson, and Winter 2018; Reuben et al. 2019). Lead, a neurotoxin, can permanently damage the brains of young children, resulting in decreases in IQ, attention deficit disorders, mental illnesses and developmental delays (Reuben et al. 2019). Such environmental stressors harm the learning capacity of some Black children and may have lifelong effects (Aizer et al. 2018). In short, American laws and policies have consistently hindered the ability of Black Americans to obtain education—harms that have had and will continue to have significant generational impacts.

HARMS RELATED TO WAGES, EMPLOYMENT, AND LABOR MARKETS

The roots of the wealth gap can be traced back not only to slavery itself, but also to the long period of labor exploitation that followed, particularly the widespread use of debt "peonage" and sharecropping (Daniel 1972). Peonage was a system in which individuals were forced to work to pay off debts largely fabricated by those in power. Despite being outlawed in 1867,[14] the system persisted well into the twentieth century. Of wider scope was sharecropping, a serf-like system in which landowners provided a piece of land to a sharecropper in exchange for a percentage (typically half) of the crop for rent. Typically, the landowner provided seeds, tools and other supplies on "credit" at high interest rates, creating a cycle of debt. Millions of

11. *Board of Education of Oklahoma City Public Schools v. Dowell*, 498 U.S. 237 (1991).

12. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).

13. *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 143 S. Ct. 2141 (2023).

14. *See* Act of Mar. 2, 1867, ch. 187, 14 Stat. 546 (codified at 42 U.S.C. § 1994) (abolishing and outlawing peonage).

newly freed Black Americans were coerced into sharecropping arrangements through the mid-twentieth century (Daniel 1972; Du Bois 1935; Blackmon 2008).

Newly freed Black Americans faced de jure and de facto exclusions from the non-agricultural labor market. In 1857, in its *Dred Scott*[15] decision, the Supreme Court determined that Black Americans were not citizens and thus could not claim privileges of liberty, including the ability to freely enter into employment contracts. After emancipation, southern states developed draconian Black Codes, derived from the earlier slave codes, to regulate the labor of newly freed slaves and emulate the then defunct slave-plantation economy (Perea 2010). Black Codes were first devised in Mississippi and South Carolina, but by 1866 were widely adopted in every southern state. These oppressive laws forced Blacks to sign abusive labor contracts on plantations, prevented Blacks from engaging in non-agricultural occupations, and often used criminalization to coerce indentured servitude or debt slavery.

Even after the passing of the Thirteenth and Fourteenth Amendments, states continued to coerce Black workers into agricultural and domestic service by replacing Black Codes with state-enforced racial segregation. Jim Crow laws prohibited Blacks from gaining adequate education and encouraged the discriminatory exclusion of Blacks from educated labor forces. Although some Blacks were able to gain access to higher paying jobs as civil servants, President Woodrow Wilson issued policy directives in 1913 segregating the federal government (Wolgemuth 1959). Wilson's policy demoted and removed Black Americans from agencies with high numbers of Black employees, like the Postal Service, and established de jure systems of federal employment discrimination (Xu and Aneja 2020).

For many White workers, the New Deal brought revolutionary wage and employment benefits like Social Security, collective bargaining rights, and minimum wage requirements. However, legislation including the National Industrial Recovery Act of 1933 (NIRA),[16] Social Security Act of 1935 (SSA),[17] and Fair Labor Standards Act of 1938 (FLSA)[18] contained facially race-neutral restrictions that effectively prevented Black workers from obtaining those same benefits. The SSA and the FLSA both excluded "domestic" and "agricultural" workers and thus together barred the overwhelming majority of Black American laborers from wage protection benefits like minimum wage, overtime pay, youth employment regulation, and Social Security (Canny 2005). The NIRA allowed southern states, where approximately 75 percent of Black workers were employed in domestic or farm labor, to pay drastically lower minimum wages for these occupations (Ray and Perry 2020). In effect, the New Deal elevated White workers, advanced wealth and wage disparities, and left Black workers in legally ghettoized jobs in the agricultural and domestic sectors in a wage basement (Canny 2005).

In the wake of World War II, the New Deal, and the Great Migration, millions of Black Americans fled the racial terrorism and plantation economy of the South for northern cities (Schelhas, Hitchner, and McGregor 2019; Wilkerson 2010). Over subsequent decades, African Americans often experienced severe social and economic marginalization within inner cities. This marginalization was the consequence of a set of mutually reinforcing spatial and industrial changes in the country's urban political economy that converged to undermine the material foundations of the traditional ghetto. There were a number of major structural shifts that took place. These included the decentralization of industrial plants between World War I and World War II and the loss of good manufacturing jobs to both over-

15. *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857) (enslaved party), superseded by constitutional amendment, U.S. Const. amend. XIV.

16. National Industrial Recovery Act of 1933, Pub. L. No. 73-67, 48 Stat. 195.

17. Social Security Act of 1935, Pub. L. No. 74-271, 49 Stat. 620.

18. Fair Labor Standards Act of 1938, Pub. L. No. 75-718, 52 Stat. 160.

seas and Sunbelt states at the very time that Black Americans were leaving the South and migrating to northern and rustbelt cities. The deconcentration of metropolitan economies and the shift toward service industries and occupations intensified the marginalization of many urban African Americans (Wacquant and Wilson 1989).

Against the backdrop of American cities, an era of mass incarceration that began in the 1970s depressed the wages of African Americans and the economic viability of Black communities. From policing to prosecution to punishment and prison, there are vast racial disparities. Although Black Americans are 13 percent of the population, they make up 37 percent of prisoners and jail inmates, with arrest rates of more than six times the rate of White Americans (Prison Policy Initiative 2023). The impact on Black wages is significant because having a record of incarceration decreases one's income by 52 percent, with an average lifetime earnings loss of nearly half a million dollars (Craigie, Grawert, and Kimble 2020). Indeed, simply having a criminal record dramatically decreases a Black or White man's likelihood of getting job, and yet a White man with a criminal record is still more likely to get a job than a Black man without one. For Black workers with a criminal record, mass incarceration represents the convergence of race discrimination and labor market bias against those with a criminal record, not unlike the Black Codes (Alexander 2012).

Deindustrialization and deunionization both affected Black workers. Black private-sector unionization rates surpassed those of White workers for decades as Black Americans sought protection against discriminatory treatment and economic inclusion. Consequently, the subsequent decline of labor and deunionization disproportionally affects the earnings of Black Americans (Rosenfeld and Kleykamp 2012), because even mild forms of racial discrimination have a bigger impact on those at the bottom of the American class order (Wilson 1989).

Even a cursory history of racial discrimination and disparity is not merely descriptive but also dispositive as to the Black wages, income, and disadvantage in the labor market. Indeed, the effect of differential economic treatment or investment in one group of people may persist for generations. The multigenerational component of wealth accumulation enables disparities to persist, and in the case of Black Americans, the legacy of disparity is reinforced by ongoing systemic barriers, such as discrimination, that curtail economic success (Edwards 2022). Even small levels of bias in education, income, and wealth can compound to create significant differences in outcomes in these metrics over time (RAND Corporation 2023). In 2022, a Black worker's annual salary was 13 percent less than that of a White worker of the same age and gender, living in the same region, and with the same education (Leonhardt 2023). If we compare hourly wages, the median Black worker (not controlling for age, gender, and other factors) earned 24.4 percent less per hour than the typical White worker.[19] This is an even greater wage gap than in 1979, when it was 16.4 percent (Wilson and Darity 2022). The cumulative racial *wealth* gap compounded over generations of families and lives is staggering—at least $14 trillion (Darity and Mullen 2020).

AUDIT OF GENERAL REPARATORY COMPENSATORY PROGRAMS

We have established that Black Americans were victims of multiple, interrelated harms that directly impaired health, earnings capacity, and right to life, liberty, and the pursuit of happiness. The U.S. government has repeatedly compensated individuals for parallel nonracial harms that directly impaired health, earnings capacity, and the right to life, liberty, and the pursuit of happiness. The government has frequently assumed responsibility for providing

19. Due largely to increases in wages for frontline workers, the gap in real earnings between Black and Hispanic workers compared to White and Asian workers narrowed during the pandemic years of 2020 to 2022 (Chakrabarti et al. 2022). However, the long-term gap in earnings, particularly between White men and Black men, shows little change over many years, particularly when accounting for the number of those participating in the labor force (Wicks-Lim 2023).

financial redress when Americans have experienced physical harms or economic loss through no fault of their own. Categories of those harmed who have been compensated include coal miners; farmers whose crops have failed; workers whose companies have gone bankrupt; victims of terrorism and natural disasters; people exposed to nuclear radiation; military veterans; individuals wrongfully convicted in the legal system; people denied earnings on tribal lands; fishermen facing depleted fish stocks; individuals harmed by pesticides, toxins, vaccines, or medical devices; workers and businesses affected by U.S. trade agreements; depositors in banks; and numerous other categories.

Compensation is a subset of the broader definition of reparations, which may involve issuing apologies, guarantees of nonrepetition, restoring those harmed to their original condition, establishing memorials, and other measures of restitution. Although the United States has seldom engaged in the full range of measures, the government has paid reparatory compensation on many occasions and continues to do so, both to people who were directly affected and in some instances, to their survivors and descendants.

Much of the U.S. public experienced this norm of reparatory compensation during the COVID-19 pandemic. In March 2020, the federal government enacted massive, bipartisan legislation that provided direct relief to individuals and businesses who lost (or were in danger of losing) jobs, income, wages, benefits, housing, food, transportation, childcare, health care, pensions, and other benefits due to the pandemic (Data Lab 2021). Between March 2020 and September 2021, Congress approved nearly $6 trillion (in eight pieces of legislation)[20] to support the economy, including $2.1 trillion in direct cash relief payments and $1.4 trillion in loans and grants to support businesses to cover payroll costs, mortgages, rent, and utilities.

Although the scale of this effort was unprecedented, the basic concept was consistent with long-standing U.S. tradition for providing partial financial amends and benefits to individuals who have experienced certain personal injuries, losses, or economic hardship. Hundreds of federal, state and local programs provide some combination of restitution, compensation, and rehabilitation to victims of harms. Millions of Americans are eligible for compensation due to personal injury, illness, disease, economic losses, exposure to toxins, disasters, and other reasons. Although these programs do not seek to make the injured party whole, they provide pathways for people to recover some of their losses.

Perhaps the most widely recognized category of individuals who receive federal compensation for harms are military veterans. The U.S. Department of Veterans Affairs (VA) is the second largest department in the federal government, with a budget exceeding $325 billion per year (U.S. Department of Veterans Affairs 2023). It administers health care, disability compensation and benefits (housing, education, job training, employment preference, and so on) to millions of men and women who have served in the military, and their families and survivors. Approximately 40 percent of Iraq and Afghanistan–era veterans have already been awarded disability benefits for the rest of their lives for medical conditions incurred during or aggravated by military service. The estimated cost of these benefits, payable over the next thirty years, exceeds $2.2 trillion (Bilmes 2021).

Some may question whether it is relevant to compare the history of racial-based harms to broader nonracial harms such as losing a pension or exposure to nuclear radiation. We find these comparisons germane for several reasons. First, they demonstrate that the U.S. government often decides that society (as a whole) will be better off if it compensates for certain losses or hardships that individuals have expe-

20. See, for example, Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, Pub. L. No. 116-123, 134 Stat. 146; Families First Coronavirus Response Act, Pub. L. No. 116-127, 134 Stat. 178 (2020); Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020); Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139, 134 Stat. 620 (2020); Coronavirus Response and Relief Supplemental Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1909; American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4.

rienced while contributing to the nation. Indeed, the government even uses the word *reparations* to describe certain compensation for losses. For example, the Commodity Futures Trading Commission (CFTC)—the federal agency that regulates the commodity futures, commodity options, and swaps trading markets—maintains a "Reparations Program" (Commodity Futures Trading Commission, n.d.). Since 1975, this program has helped those who have suffered losses to claim financial damages, through CFTC adjudication (Commodity Futures Trading Commission 2023). Second, the sheer breadth of nonracial harms and corresponding reparatory compensation programs demonstrate the federal government's programmatic expertise and experience in calculating financial values for a wide variety of harms.

Given that Black Americans have long been deprived of the ability to accumulate wealth, we argue that it is consistent with precedent for the country to choose to secure a more contented and fair society by providing compensation to Black Americans for unpaid contributions to the country and in recognition of the suffering endured. Additionally, by acknowledging the precedent for reparative compensation in parallel, but nonracial circumstances, it is easier to imagine and to articulate the case for reparations related to slavery and its aftermath.

Given space constraints, we cannot examine all reparatory compensation programs in this article. We describe several of them briefly and outline three programs in greater depth in the following paragraphs. (Table A.1 provides a sample of additional programs).

First are numerous programs dealing with harms to health and well-being. For example, the Federal Coal Mine Health and Safety Act,[21] enacted in 1969, provides monthly reparatory compensation for individuals who contracted black lung or other chronic lung diseases by working in or near coal mines. It is funded by an industry-wide tax on coal manufacturers and sellers,[22] although coal mine bankruptcies have shifted the costs to the federal government (U.S. Government Accountability Office 2019). The Black Lung Program has paid out over $47 billion since 1970 (U.S. Department of Labor 2020). The National Vaccine Injury Compensation Program (VICP), set up in 1986, compensates individuals who suffer injury or death from government-recommended vaccinations.[23] The program is funded through a $0.75 excise tax on every vaccine dose delivered in the United States, including seasonal flu, tetanus, and childhood vaccines. The VICP has paid out some $5 billion in compensation to about nine thousand individuals (Health Resources and Services Administration 2021). A similar program, the Countermeasures Injury Compensation Program, enacted in 2005, pays individuals who suffer serious side effects related to vaccines not covered by the original program, such as anthrax, smallpox, Zika, and COVID-19, or harms due to medication, devices, or diagnostic instruments (Meyers 2020).

In the agricultural sector alone, the federal government maintains hundreds of programs established to mitigate potential economic harms. Many were set up in the Dust Bowl years of the 1930s, when hundreds of thousands of farming families lost crops and livestock and went bankrupt or became homeless due to severe drought, storms, pests, and overplanting. At the time, the federal government provided some $1 billion ($18.7 billion in 2023 dollars) in compensation to assist those affected in the region (Warrick 1980). It subsequently established an extensive safety net to ensure that farmers and landowners today are protected against such economic losses. Today the United States spends billions of dollars each year to insure, provide loans, and give actual payouts

21. Federal Coal Mine Health and Safety Act of 1969, Pub. L. No. 91-173, 83 Stat. 742.

22. Congress implemented this industry-wide tax through the Black Lung Benefits Revenue Act of 1977, which amended the Federal Coal Mine Health and Safety Act of 1969. See Black Lung Benefits Revenue Act of 1977, Pub. L. No. 95-227, 92 Stat. 11; 26 U.S.C. § 4121.

23. These vaccines are recommended for children and pregnant women. They include diphtheria, hepatitis A and B, mumps, Polio, rubella, Tetanus, varicella, and other vaccines routinely administered and approved by the Food and Drug Administration

to farmers and landowners for loss of income on crops or livestock, or damage to yields or quality of the output due to weather, pests, invasive species, plant diseases, fire, exposure to toxins, defective soil, water, predators, market fluctuations in commodity prices, adverse impact from U.S. trade agreements, or other factors. Depending on the program, beneficiaries may include people who own or control farms, rangeland, grassland, pastureland, nonindustrial forest land as well as others involved in agriculture. Specific programs have been established for bees and other pollinators, dairy, cotton, grain, hay, rice, sugar, hogs, fruits, vegetables, trees, feedstock, farm-raised fish, livestock, crop storage, forests, biofuels, organic farming, underserved farmers, young farmers, heirs, farm loans, farm equipment, and other items (Farm Service Agency 2020). Some of these are huge programs. For example, between 2018 and 2020, the Department of Agriculture Market Facilitation Program paid $28 billion to more than five hundred thousand farmers to offset the impact of tariffs on China (Charles 2019). Thousands of farmers received more than $100,000 each, more than twice the financial harm they suffered due to the tariff, according to independent economists (Charles 2019).

Most farm safety net programs are provided free of charge or for a nominal participation fee. Taxpayers bear most of the costs, including subsidies paid to farmers and to insurance companies, and costs of indemnity payments for excess losses. For example, the Federal Crop Insurance Corporation (FCIP) provides risk protection and financial support to U.S. farmers in the event of poor market conditions (low farm prices) or natural disasters. It subsidizes insurance for producers of 130 major crops at an average cost to taxpayers of $8.2 billion per year (Rosch 2021). The FCIP is a public-private partnership in which farmers select coverage from one of eighteen heavily government-subsidized private insurance companies. In the case of serious weather disaster, the federal government pays the entire premium (U.S. Department of Agriculture 2021). The FCIP insures 96 percent of all U.S. cotton crops and more than 85 percent of soybeans, corn, and wheat crops (Shields 2015). Dairy, specialty crops (e.g., ginseng), livestock, Christmas tree producers, and special grazing animals (such as alpacas, buffalo, bison, elk, emus, goats, llamas, reindeer, and sheep) all have their own support programs (Farm Service Agency 2021). Similarly, other programs subsidize the commercial fishing industry and recompense fishermen for losses due to weather disasters and economic conditions (Wilson and Jarrett 2021).

The federal government also provides monetary compensation and other benefits to Americans who are victims of adverse weather conditions. These include acts of nature (floods, droughts, hurricanes, tornadoes, earthquakes, wildfires, freeze, hail, excessive wind, excessive moisture, volcanic activity, plant disease, excessive heat, and other adverse weather) and other types of disasters, such as oil spills, terrorist attacks, radiation leaks, building collapses, insect infestations, predator attacks, crimes, fraud, and economic crises. These programs are administered in three main ways: direct federal payments and actions from agencies such as the Federal Emergency Management Agency, state agencies following federal designation of disasters, and government-subsidized programs to insure people in order to mitigate economic hardship in the event of disasters. Specific programs have been established for victims and family members of the Iran Hostage Crisis, the Oklahoma City Bombing, and acts of terrorism. For example, the September 11th Victim Compensation Fund has already paid out $9.4 billion to 9/11 victims and their families, including first responders, cleanup workers, office workers, residents, and others who were injured, made ill, or lost family members (September 11th Victim Compensation Fund 2020). In 2021 alone, the fund paid out $1.5 billion to ten thousand claimants (Weisfuse & Weisfuse, LLP 2022). Claims may be filed until 2090; hence the fund is liable for potentially billions more in future years.[24]

24. Never Forget the Heroes: James Zadroga, Ray Pfeifer, and Luis Alvarez Permanent Authorization of the September 11th Victim Compensation Fund Act, Pub. L. No. 116-34, 133 Stat. 1040 (2019).

Americans who are harmed by U.S. trade policies are also eligible for financial compensation and for certain benefits, such as job training. The Trade Act of 1974[25] was set up to provide "relief from injury caused by import competition;"[26] its predecessor, the Trade Expansion Act of 1962, was enacted to render assistance to "those who suffer as a result of national trade policy" (U.S. Congress 1987). The accompanying Trade Adjustment Assistance (TAA) program (*Congressional Quarterly* 1963) provides retraining subsidies, income support, and health-care tax credits to workers whose employment was reduced or terminated due to rising imports, a shift in production to a foreign country, or market conditions (Collins 2018). The program is designed to assist workers or industries hurt by tariffs. For example, the president can authorize the Department of Labor to pay unemployment benefits of higher and longer duration (than other federal plans) plus retraining and relocation allowances, loans, loan guarantees, technical assistance, and special tax deductions. Since 1974 the program has served more than five million Americans. In FY2022, it served 14,608 participants (U.S. Department of Labor 2023).

We now describe three programs that are highly relevant to slavery reparations. The first is U.S. reparatory compensation for exposure to nuclear test fallout. This example is comparable in that the compensation started decades after the original harms took place and the effort to establish it involved nationwide hearings and oral histories; the program is large scale and ongoing; and compensation may be paid to descendants. The second example relates to federal compensation for the loss of private pensions, which echoes some of the early efforts of reparations pioneer Callie House to seek deferred compensation for lost wages. The third example involves the history of Indian land rights due to similarities in the harms, concepts, and the history of how the compensation was enacted.

COMPENSATION RELATED TO EXPOSURE TO U.S. NUCLEAR WEAPONS TESTING

During the early years of the Cold War, the United States conducted extensive nuclear weapons testing in western U.S. states and in the Pacific atoll of the Marshall Islands.[27] It conducted 1,054 atomic weapons tests, including more than one hundred atmospheric tests, in which the weapons released radioactive material above ground. Hundreds of thousands of people living in the vicinity of the test sites were exposed to radiative contamination from the tests and related activities such as mining and transporting uranium. The U.S. military also detonated sixty-seven nuclear bombs in the Marshall Islands, with a firepower equaling the energy yield of seven thousand Hiroshima bombs (Szymendera 2022b; Rapaport and Hughes 2022). Local people breathed, absorbed, drank, and ate considerable amounts of radioactivity for decades. In the 1950s, numerous reports were filed of cancers, diseases, birth defects, fertility problems and other ailments. Family members and survivors started lobbying for redress. This eventually led to a complex effort by survivors to document the widespread damage caused by the government's nuclear testing program, which included congressional hearings and local hearings at which descendants told stories of deceased relatives who had suffered harms. The effort yielded three major pieces of legislation (subsequently expanded) that has paid roughly $33 billion so far, covering some two hundred thousand claims by survivors and descendants.

Early reparations legislation resulted from Marshall Island inhabitants suing the United States in the U.S. Court of Claims. To process those claims, the independent Nuclear Claims Tribunal was established in 1986, and the government set up a $150 million Nuclear Claims Fund to compensate victims in exchange for the islands agreeing to "espouse and dismiss" the damages claims of its citizens.

25. Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978.

26. Trade Act of 1974, Pub. L. No. 93-618, § 201-84, 88 Stat. 1978, 2012-41.

27. The U.S military detonated the first-ever atomic bomb at the Trinity Test Site near Arizona in July 1945, three weeks before dropping others on Hiroshima and Nagasaki.

As part of the agreement, the federal government issued an apology:

> The Government of the United States accepts the responsibility for compensation owing to citizens of the Marshall Islands, or the Federated States of Micronesia (or Palau) for loss or damage to property and person of the citizens of the Marshall Islands, or the Federated States of Micronesia, resulting from the nuclear testing program which the Government of the United States conducted in the Northern Marshall Islands between June 30, 1946, and August 18, 1958. (U.S. Department of the Interior 1986)

The United States agreed to compensate for harms, "past, present and future . . . which are based on, arise out of, or are in any way related to the Nuclear Testing Program" related to loss or damage to persons or property as a result of the U.S. nuclear testing program.[28] Due to claims and damages far exceeding the original amount of the trust fund, between 1954 and 2004 the federal government spent between at least $834 million (in 2022 dollars) on paying for individual compensation, health care, cleanup of contaminated sites, and housing resettlement efforts (Lum et al. 2005). By December 2004, the Nuclear Claims Tribunal had paid personal injury awards to approximately two thousand individuals. The program ceased payments in 2011 after the funds were depleted, despite efforts to continue the payouts.

The second major legislation for nuclear testing reparations was enacted in 1990, more than forty years after family members in Nevada and other testing areas started calling attention to the health problems suffered by individuals who had been involved in nuclear weapons research, manufacturing, transportation, waste disposal, or who lived in the vicinity of such activities. It was estimated that potentially six hundred thousand people were affected, including contractors who had worked for corporations including Lockheed Martin, DuPont, Johnson Controls, and Bechtel (Silver 2005) and people exposed to mining in the Navajo Nation and other Indigenous lands.[29] After decades of advocacy, in 1990 the federal government enacted the Radiation Exposure Compensation Act (RECA),[30] which established a $100 million trust fund to provide "compassionate lump-sum payments" to individuals harmed by exposure to radiation from atmospheric nuclear weapons testing or uranium mining. The enacting statute read as follows: "The Congress apologizes on behalf of the Nation to the individuals described in subsection (a) and their families for the hardships they have endured." This legislation was specifically intended to provide restitution. As U.S. Deputy Assistant Attorney General Jeffrey Bucholtz later testified to the Senate Judiciary Committee:

> From 1945 through 1962, the United States conducted extensive atmospheric nuclear weapons testing as part of our Nation's Cold War security strategy. Critical to this endeavor was the processing of uranium conducted by individuals employed in the uranium industry. Many of those individuals subsequently contracted serious illnesses, including various types of cancer, due to their exposure to radiation. In order to make partial restitution to those individuals for their sacrifices, Congress passed the Radiation Exposure Compensation Act." (U.S. Congress 2004)

The program awards tax-free lump-sum compensation ranging from $50,000 to $100,000 for uranium workers (miners, millers, or transporters), workers and others present at the test sites, and downwinders (people who lived or worked downwind from test sites) who

28. Agreement Between the Government of the United States and the Government of the Marshall Islands for the Implementation of Section 177 of the Compact of Free Association, June 25, 1983, https://www.doi.gov/sites/doi.gov/files/section-177-agreement.pdf.

29. The Environmental Protection Agency has more than five hundred abandoned uranium mines in the Navajo Nation (U.S. Environmental Protection Agency, n.d.)

30. Radiation Exposure Compensation Act, Pub. L. No. 101-426, 104 Stat. 920 (1990).

developed certain illnesses, (e.g., cancer, fertility impairment, thyroid problems) as well as medical care.[31] If the victim is deceased, the benefit is paid to survivors according to an order of precedence: spouse, children, parents, grandchildren, grandparents, other designated relative.[32]

RECA was amended to increase the Trust Fund from $100 million to "such sums as may be necessary to carry out [the Act's] purposes" (Lister and Redhead 2009), expand eligible beneficiaries to include uranium millers and transporters, lower the proof threshold, add six more states to eligibility, allow denied claimants to resubmit their claims or to appeal in district courts, remove the constraint that disease onset must be within thirty years of first exposure, and "explicitly consider" Native American law and customs in processing claims from Native peoples. The program is currently extended through 2024.[33] As of May 2022, RECA had paid out more than $3.5 billion for 39,302 claims (Szymendera 2022b).[34] RECA led to a wider reckoning with the harms inflicted by the nuclear weapons race during the Cold War. In 1999, Dr. David Michaels, then Assistant Secretary of Energy for Environment, Safety and Health, convened a series of hearings around the country, co-chaired by local members of Congress, raising attention to these harms and the suffering they had caused. This provided the opportunity for many people to tell their stories and describe the suffering of the victims. Over the next decade, there were additional national hearings.

In 2000, more than half a century after the United States tested the first nuclear bomb, Congress enacted a third major program, the Energy Employees Occupational Illness Compensation (EEOIC) program.[35] This sweeping program of reparatory compensation provides up to $150,000 in cash stipends plus medical care to a wider group of individuals (and survivors) of exposure to nuclear materials in weapons testing or production. It includes those diagnosed with illnesses linked not only to radiation, but also to any illness caused, contributed to, or aggravated by any toxic substances (such as asbestos, solvents, heavy metals) encountered in that environment. The eligibility standards for this program were designed to favor the claimant, as it involved "reconstructing past exposures from interviews and documentation; using confidence intervals to express statistical uncertainty; and erring on the side of the worker" (Silver 2005). President Clinton's Executive Order 13179, which established the program, stated,

> Since World War II, hundreds of thousands of men and women have served their Nation in building its nuclear defense. In the course of their work, they overcame previously unimagined scientific and technical challenges. Thousands of these courageous Americans, however, paid a high price for their service, developing disabling or fatal illnesses as a result of exposure to beryllium, ionizing radiation, and other hazards unique to nuclear weapons production and testing. . . . While the Nation can never fully repay these workers or their families, they deserve recognition and compensation for their sacrifices. (Clinton 2000)

The program is administered by the Department of Labor, which handles claims, and the Department of Energy, which provides worker

31. Medical benefits of $50,000 for certain categories.

32. Energy Employees Occupational Illness Compensation Program Act of 2000, Pub. L. No. 106-398, §3630(e)(2), 114 Stat. 1654A-495, 506 ("The right to receive compensation under this section shall be afforded to survivors in the same order of precedence as that set forth in section 8109 of title 5, United States Code").

33. RECA Extension Act of 2022, Pub. L. No. 117-139, 136 Stat. 1358 (codified as amended at 42 U.S.C. 2210 note).

34. Early payments deflated to 2022.

35. Title XXXVI of the Energy Employees Occupational Illness Compensation Program Act of 2000, Pub. L. No. 106-398, 114 Stat. 1654A-495.

Table 1. Reparatory Compensation for Nuclear Testing

Year enacted	1990	2000	1986
Program	RECA	EEIOCA	Marshall Islands
	Pub. L. No. 101–426	Pub. L 106-398	48 U.S.C. Chapter 18
Cash Payment	Yes	Yes	Yes
Living survivors or descendants	Yes	Yes	No
Apology	Yes	Partial	Yes
Other benefits	Yes (health care)	Yes (health care)	Yes (relocation, aid)
Claimants to date (2021)	39,406	135,000	2,000
Paid to date (2022 dollars)	$3.5 billion	$28.3 billion	>$800–$1 billion
Funding mechanism	Trust fund	Mandatory appropriations	Claims fund from 1954 to 2004

Source: Authors' tabulation based on Szymendera 2022a, 2022b.

and facility data. As of 2023, the EEOIC Fund had paid out roughly $28 billion program in medical and financial compensation to more than 135,000 workers and survivors (see table 1; U.S. Department of Labor 2022). The fund is financed through the mandatory federal budget and not subject to annual appropriations (Szymendera 2020).

COMPENSATION FOR LOSS OF DEFERRED COMPENSATION

At the end of the Civil War, most former slaves had no financial resources, property, residence, or other tangible assets to show for their years of work. Yet relatively soon the concept of pensions was introduced to provide deferred compensation to elderly Union Civil War veterans for their service during the war (Glasson 1918). The concept of pensions became a popular idea. In 1875, the American Express Company established the first private pension plan in the United States, and shortly thereafter utilities, banking, and manufacturing companies also began to provide pensions (PBGC 2022a).

In 1894, extending this logic, the Reverend Isaiah H. Dickerson and Callie Guy House cofounded the National Ex-Slave Mutual Relief Bounty and Pension Association to advocate for pensions for ex-slaves for their years of unpaid labor. The goals included to petition Congress for legislation that would grant pensions to former slaves, particularly those who were elderly, and to provide aid and burial expenses. At that time, 21 percent of the Black population had been born into slavery, so providing for them and their caregivers required only a relatively modest sum (Berry 2005). The association proposed a detailed pension payment scale based on the age of the beneficiaries (Perry 2010).[36]

In 1890, the first ex-slave pension bill[37] was introduced in Congress at the request of Walter R. Vaughan of Omaha, a White former mayor of Council Bluffs, Iowa, who believed that pensions would boost the southern economy as well as benefit former slaves. House and Dickerson continued to raise the profile of the issue, and the movement gained some traction. In July 1914, Callie House launched a class-action suit against the federal government, claiming $68,073,388.99, which was the amount collected as taxes on cotton between 1862 and 1868.[38] Ultimately political opposition to the

36. Ex-slaves seventy years and older were to receive an initial payment of $500 and $15 per month for the rest of their lives; ex-slaves age sixty to sixty-nine would receive $300 and $12 per month; ex-slaves age fifty to fifty-nine would receive $100 and $8 per month; and those ex-slaves younger than fifty years old would receive $4 per month. If formerly enslaved persons were too ill to care for themselves, their caretaker was to be compensated.

37. H.R. 11119, 51st Cong. (1890).

38. See *Johnson v. Mcadoo*, 45 App. D.C. 440 (D.C. Cir. 1916).

Table 2. Reparatory Compensation for Loss of Deferred Compensation

Year enacted	1974 (amended multiple times)
Program and statute	ERISA Pub. L. No. 93406
Cash payment	Lifetime
Living survivors	Allows single beneficiary
Other benefits	No
Apology	N/A
Claimants (2021)	>1 million per year
Paid (2022 dollars)	$7 billion per year
Funding mechanism	Insurance premia paid by companies, investments, assets of pension plans, bankruptcy proceeds.

Source: Authors' tabulation, government records.

idea of granting pensions to ex-slaves was strong and the suit was dismissed.

In this context, it is reasonable to view the original Union promise of forty acres, the lack of compensation for work post-slavery, the barriers against acquiring property and earning a fair wage, and the legacy of false and coerced debts as instances of Black Americans being overdue to receive deferred compensation.

For the past half century, the federal government has accepted responsibility for individuals who lose deferred compensation in the form of pensions, even though these losses are typically caused by bankruptcy or mismanagement by the private sector. The major federal compensation program is the Employee Retirement Income Security Act of 1974 (ERISA),[39] Public Law No. 93–406, which was set up explicitly to protect people from losing their retirement benefits due to factors beyond their control (BenefitCorp 2020). The principle is that if a worker loses a pension for any reason the government steps in to replace part of it so that a person's labor is not uncompensated. The government protects against loss of benefits if private pensions are terminated or cannot pay benefits due to bankruptcies, Chapter 11 reorganizations, liquidations, downsizing, layoffs, bank closures, or insolvency. In 2018, some 140 million Americans had these retirement plans, including thirty-four million with traditional defined benefit pensions (Employee Benefits Security Administration 2021). President Gerald Ford signed the ERISA bill on September 2, 1974, Labor Day, stating,

> Many workers have ultimately lost their benefits—even after relatively long service—because when they left jobs, they thereby gave up rights to hard-earned pension benefits. Others have sustained hardships because their companies folded with insufficient funds in the pension plan to pay promised pensions. . . . Today, with great pleasure, I am signing into law a landmark measure that may finally give the American worker solid protection in his pension plan. (PBGC 1974)

ERISA guarantees payments to retirees in two schemes. For single-employer plans, the Pension Benefit Guarantee Corporation (PBGC) pays retirees directly up to a certain amount if the plan fails. For multi-employer plans, the PBGC provides financial assistance to the plans themselves so that they remain solvent (that is, it does not take over and pay retirees directly). In FY2022, the PBGC paid more than $7 billion in monthly retirement benefits to more than 960,000 retirees in single-employer pension plans that had ended or failed (PBGC 2022b). The PBGC also provided $226 million in loans to 115 failed multi-employer plans to protect the benefits of an additional 93,525 retirees (Myers and Topoleski 2021). The PBGC is funded through a combination of insurance premiums paid by the companies whose plans are protected: assets of pensions that it takes over, recoveries in bankruptcies from the companies responsible for the plans, and the PBGC's investment of these assets (see table 2).

39. Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829.

COMPENSATION FOR INDIAN LAND RIGHTS

The American Indian Trust Fund is an example of reparatory compensation, paid out today to the descendants of tribes whose land rights were stolen and mismanaged in the nineteenth century. In the 1880s, many American Indian nations signed treaties with the United States that ceded the title of their lands to the federal government in exchange for sovereignty, health care, education, and protection. In many cases, these nations retained resource rights, meaning they were entitled to revenue generated from activities on the lands, including drilling, grazing, hunting, mining, and timber production (U.S. Department of the Interior 2021). The lands held in common by members of tribes were subdivided into small individual allotments under the Dawes Act of 1887 (over the strong opposition of the tribes). The federal government legally operated as the fiduciary banker for funds raised.

For more than a century, these funds were mismanaged or stolen. A 1993 report found that the Bureau of Indian Affairs trust operation lacked adequate written procedures and policies, balances were not reconciled, and lease operators were not audited (U.S. General Accounting Office 1993). An Arthur Anderson & Co. study of transactions between 1973 and 1992 found that $2.4 billion in trust funds were missing in that twenty-year period alone (Sahagun 1996). Since most trust agreements dated to 1887,[40] it was evident that the total losses for a century of mismanagement were far higher (Sahagun 1996).

During this period, the original allotments were "fractionated" among the heirs of six succeeding generations so that some parcels were owned by hundreds of thousands of people. In 1996, Elouise Cobell along with the Native American Rights Fund, filed a class-action lawsuit—*Cobell v. Salazar*[41]—against the Department of the Interior for the mismanagement of the Indian Trust Funds on behalf of three hundred thousand tribal members (Rothberg 2020).[42] These members were descendants of families who had received little or no payment in the 122 years since the Dawes Act. Cobell donated most of her $310,000 MacArthur Genius grant to finance the lawsuit (Rothberg 2020). In 2009, President Barack Obama signed a $3.4 billion settlement, far less than the $48 billion that the descendants of the original trust holder sought (Rothberg 2020). The settlement included $1.5 billion for the members of the lawsuit, $1.9 billion for a Land Consolidation Program, and $60 million for a college scholarship fund for Native American youth. It will pay out about $1.5 billion to compensate about a half a million Native Americans. Some will receive a flat payment of $1,000 and others will receive a little more when the records of their trust accounts are located and indicate that more income is due.

The Department of the Interior now holds approximately 44 million acres in fiduciary trust for the sovereign nations and an additional 11 million acres belonging to individual tribal members. The Bureau of Trust Fund Administration, the entity that manages the monies from these lands, oversees $5 billion of investments and disburses more than $1 billion annually to nations and individuals (Bureau of Trust Funds Administration 2015). By 2030, 11 million individuals will have a stake in trust lands and be eligible for small payments. In one case, revenue from a forty-acre parcel was divided among 439 owners, two-thirds of whom receive less than one dollar annually (Reis 2009). In addition, Congress has enacted several other such settlements, including a $5.8 billion settlement related to water rights, and the Alaska Native Claims Settlement Act

40. Dawes Act of 1887, Pub. L. No. 49-105, 24 Stat. 388.

41. The case that became *Cobell v. Salazar* began as *Cobell v. Babbitt*. In suits against the Department of the Interior, the named respondent is the secretary of the interior. When Elouise Cobell initially filed suit, the secretary of the interior was Bruce Babbitt; by the time the case was settled in 2009, the secretary was Ken Salazar.

42. In 1987, Cobell helped found the Blackfeet National Bank, now the Native American Bank, the first American bank owned by a tribe.

Table 3. Indian Land Rights

Program and Statute	Alaska Native Claims 43 U.S.C. Chapter 33 (§§ 16011629h)	American Indian Trust Funds 25 U.S.C. Chapter 42, Subchapter III (§§ 151–167)	Indian Water Rights Settlements (thirty-nine statutes)[a]
Year Enacted	1971	2009 (re: 1887)	1978–2016
Cash Payment	Yes	Yes	Yes
Living Survivors	Yes	Yes	Yes
Other benefits	Yes	Yes	Yes
Apology	No	No	No
Claimants (2021)	Alaskan Native Corporations shareholders	300,000–500,000+ growing	40 communities
$ Paid (2022 dollars)	44 million acres and $963 million	$3.4–$5 billion; $1 billion annually	$5.8 billion
Funding Mechanism	Alaska Native Fund, federal oil and gas leases, appropriations	Income on land leases and investment income	Reclamation Water Settlement Fund (mandatory to 2009)

Source: Authors' tabulation.

[a]https://www.doi.gov/siwro/enacted-indian-water-rights-settlements.

of 1971,[43] which provided 44 million acres of public land and $962 in cash payments to Indian organizations (see table 3; University of Alaska, n.d.).

Taken together, these compensation programs illustrate four precedents that are important for designing reparatory compensation for slavery-related harms. First, the programs acknowledge that such harms have taken place, and the federal government accepts some degree of responsibility. Second, the development of the legislation often makes it possible for family members, descendants, and communities to tell their stories and bear witness to the harms that had been inflicted on victims. Third, the programs pay direct financial redress, in addition to providing other benefits (such as medical care or land reclamation). Fourth, these programs show the capacity of the government to administer such claims, including identifying beneficiaries, processing applications, conducting outreach, and amending the programs as needed. Above all, the range of harms for which the federal government provides some form of compensation highlights the absence of compensation for harms to Black Americans for comparable harms. Table 4 illustrates this lack of comparability, using a small subset of harms.

REPARATORY COMPENSATION PROGRAMS DEDICATED FUNDING

A key finding of our research is that the federal government draws on designated fees, trust funds, excise taxes, subsidized insurance premiums, and customized financial arrangements to help pay for the wide system of reparatory compensation. For example, when Silicon Valley Bank collapsed in March 2023, President Biden pledged to cover all uninsured deposits, assuring Americans that "no losses will be borne by the taxpayers" (White House 2023). This was possible because depositors were reimbursed by the fees that banks pay into

43. Alaska Native Claims Settlement Act, Pub. L. No. 92-203, 85 Stat. 688 (1971) (codified at 43 U.S.C. §§ 1601-29h).

Table 4. Selected Harms and Categories of Compensation

Category	Uncompensated Harms to Black Americans	Federally Compensated Harms
Health	Forced sterilizations of women[a]	Fertility impairment due to nuclear test exposure
Education	Low access to education for Black World War II or Korea veterans	GI Bill education benefits for World War II or Korea veterans
Housing	Mortgage discrimination, redlining	Compensation for damage to housing due to flood and disasters
Wages and Employment	Economic impairment and strangulation through sharecropping and debt peonage system; destruction of Black Wall Street in Tulsa	Compensation for economic impairment due to trade agreements; compensation for loss of pensions; reparations for destruction of Marshall Islands
Criminal Justice	Racial massacres (such as lynching, Rosewood); Convict Leasing	Compensation to victims of terrorism; Crime Victims Fund

Source: Authors' tabulation.

[a] It is estimated that seventy thousand Americans were subjected to forced sterilizations as part of the eugenics movement in the twentieth century. These were overwhelmingly working-class women of color labeled as "feeble-minded" or "promiscuous" (Ladd-Taylor 2017; Cohen 2016). In Mississippi alone, 683 individuals (160 men and 523 women) were forcibly sterilized between 1930s and 1960s, leading to the term "Mississippi appendectomies" (Cahn 2007).

the FDIC. The FDIC insurance fund is funded by a levy on bank deposits, in which banks pay 12 cents for every $100 deposited into the FDIC insurance fund (Getter 2014). When a bank fails, depositors are made whole by this fund, which currently holds about $125 billion. The insurance covers only deposits up to $250,000, but in fact uninsured depositors have been paid out in full during many bank failures (FDIC Podcast 2021). The National Credit Union Administration has similar insurance for credit union accounts.

A number of federal reparatory compensation programs are financed using pooled risk schemes funded primarily by market participants such as the FDIC bank deposit insurance, pension guarantees, and crop insurance. The government also uses excise taxes, often in exchange for full or partial legal indemnity, such as the National Vaccine Injury Fund and the Black Lung Disability Trust Fund; programs funded through a combination of taxation and fees, such as the 9/11 Victims Compensation fund paid partially through a fee on visas; as well as programs funded largely through general taxation.[44] Numerous federal agencies administer these programs, including the Departments of Labor, Justice, Commerce, Treasury, and Agriculture. Typically, when the government expands, amends, or modifies its initial effort to provide reparatory compensation, the government ends up over time with a cluster of related programs. Together, these efforts provide varying levels of benefits for victims depending on how the harm affected them, and there may be separate sources of funds.

Subsidized insurance is also a relevant concept. The Government Accountability Office has identified 157 distinct plans through which the federal government assumes the insurance risk against harms that may occur for activities that are administered by more than thirty federal agencies. These cover numerous activities related to health, life, disability, and property-casualty, including up to $8 billion in federally subsidized insurance for art exhibits (National Endowment for the Arts 2023), and programs to insure individual claims up to $1 billion for

44. Benefits.gov, 2021, https://www.benefits.gov.

damage from oil spills if the responsible party does not pay through the Oil Spill Liability Trust Fund (OSLTF), which is funded through a per-barrel excise tax on oil. From FY2007 to FY2018 the OSLTF paid out $3.4 billion in claims, but this was offset by excise tax receipts, penalties and interest it received of $9.54 billion (National Pollution Funds Center, n.d.; U.S. Government Accountability Office 2005).

Compensation and benefits to victims and survivors are paid in several forms, including cash stipends, health-care guarantees or subsidies, loans, tax rebates, education, housing, training, relocation and other benefits, as well as payments to certain communities, and geographical locations. The existence of these programs shows not only the creativity of the federal government in devising methods of compensation, but also the government's ability to structure and administer programs, to define eligibility standards, and to provide oversight on the distribution of benefits.

Thus, although the legacy of harms has created a vast wealth gap between Black and White Americans, we believe it is entirely feasible for the government to identify sources of dedicated funding that could begin to pay for reparations programs. Such funding streams might include imposing modest excise taxes on home sales, home insurance policies, dedicated capital gains or wealth taxes, dedication of savings from decommissioning of pennies for this purpose, dedicated securities financing for baby bonds, or other mechanisms.

CONCLUSION AND POLICY RECOMMENDATIONS

Since the founding of the American republic, calls for reparations have accompanied calls for the emancipation of enslaved Black Americans. These demands have been rebutted by the three arguments, that reparations, even if morally justified, are too administratively difficult, too financially expensive, or for racial harms too long ago. Accordingly, granting reparations to Black Americans, even relative to reparations granted to unconstitutionally interned Japanese Americans and genocidally dispossessed Native Americans, is considered aberrational and exceptional. In a word, the prospect of reparations for the racial harms of Black Americans seems unprecedented, even impossibly daunting.

In response, this article set forth an illustrative taxonomy of racial harms that Black Americans endured. Further, it described an audit of federal programs addressing a wide variety of nonracial harms, an equally broad variety of means for addressing those harms, and an expansively diverse set of beneficiaries. The audit of federal programs revealed the existence of a long-standing norm of the federal government compensating Americans who have been harmed by policies, government actions and inactions, circumstances, and acts of nature beyond their control. The fiscal means by which the federal government actualizes this norm constitutes what we term reparatory compensation. The numerosity and diversity of reparatory compensation programs makes clear that reparations for nonracial harms is regular and routine. Juxtaposing the audit of reparatory compensation programs with the taxonomy of reparation-less racial harms makes clear that America provides reparations to nearly everyone but Black Americans, even for comparably severe harms. We conclude with three policy recommendations: executive or congressional action, federal fiscal analysis, and public education.

Executive and Congressional Action

The president should convene a national commission to study and propose a scheme of federal reparations, authorized by an Executive Order or federal legislation; and charge the commission to use the breadth, variety, and diversity of reparatory compensation programs to develop a reparations program that addresses of the full range of racial harms, including specifically the racial wealth gap.

Federal Fiscal Analysis

Accordingly, the president should direct the Office of Management and Budget and other federal agencies to conduct an audit of federal reparatory compensation programs detailing the budget, beneficiaries, legal authority, and harms alleviated by such programs; conduct an audit of all relevant federal reparatory compensation programs since 1865; conduct an audit of reparatory compensation programs related

to the denial of G.I. benefits to Black veterans in World War II and the Korean War; review and collect stories of World War II and Korean War Black vets illustrative of the taxonomy of racial harms; with the support of selected historians and economists, create a taxonomy and study of the racial harms described in the existing federal collection of digitized collection of slave narratives; with the foregoing, issue a national reparatory compensation report as an evidentiary, analytic, and programmatic predicate for the feasibility of reparations for Black Americans; and draft a fiscal model of a reparatory compensation program for all living Black World War II and Korean War veterans (and their direct descendants) who were denied education and housing benefits. This manageable model is meant only to illustrate the variety, efficacy, and impact of reparatory compensation, not limit the scope of reparations for Blacks.

Public Education

The president should direct the commission to conduct nationwide field hearings and to convene listening sessions for the public to share stories, family histories, and documents to narratively inform the study of reparatory compensation for Black Americans, and provide the public with data related to reparatory compensation in relatable terms, on accessible platforms, in symbolic venues related to Black history.

As the foremother of the reparations movement Callie G. House declared in 1899, "If the Government had the right to free us, she had a right to make some provision for us; and since she did not make it soon after Emancipation, she ought to make it now" (Berry 2005, 50). More than 124 years later, this article makes it clear that the norm, precedent, and federal expertise are in place to make reparatory compensation a reality for Black Americans—now.

Table A.1. Selected Federal Reparatory Compensation Programs

1. Year	2. Statute	3. Name	4. Harm	5. Description	6. Size $ ($2022)	7. Eligibility	8. Administered by	9. Financing
1862	Act of Apr. 16, 1862, 37 Cong. Chapter 54, 12 Stat. 376	District of Columbia Emancipation Act	Compensation to slaveholders for loss of property	Compensated slaveholders in D.C. up to $300 per slave freed	$1 million ($26 million)	Proof of releasing slaves	Emancipation Commission	Appropriations
1887–2009	25 U.S.C. Chapter 42, Subchapter III (§§ 151167)	American Indian Trust Funds Settlement	Loss of land rights	Federal trust for paying Indians who retain rights over land rights from drilling, grazing, timber, and so on	Disburses $1 billion annually, $3.4 billion agreed 2009	Must have rightful claim to Indian Trust Fund distributions through Tribal membership	DOI	Income on land leases and investment income
1927	33 U.S.C. Chapter 18 (§§ 901–950)	Longshore and Harbor Workers Compensation	Injury, disease, loss of life due to maritime work	Medical care or disability benefits to private sector maritime workers and survivors	$2 billion in 2017, cash, medical benefits	Maritime occupations for injuries. Includes contractors and non-U.S. waters	DOL	Government subsidized private insurance
1928	45 U.S.C. Chapter 9, Subchapter IV (§§ 231–231v)	Social Insurance for Railroad Workers	Old-age pensions + medical (more generous than Social Security)	Retirement, unemployment, sickness, injury benefits for railroad workers and families	$13.3 billion in benefits paid in FY 2019	Railroad worker for > five years, full retirement benefits age sixty, benefits to family members, survivors	Railroad Retirement Board (RRB)	National Railroad Retirement Investment Trust, funded by payroll taxes and railroads
1933	Chapter 89, 48 Stat. 162 (Banking Act of 1933)	Bank deposit insurance (in Glass-Steagall)	Bank Deposit Insurance for depositors	FDIC insures per depositor, per insured bank, for $250,000	$22.3 trillion in insured assets	A deposit account opened in an FDIC insured bank is automatically covered	FDIC	Funded through fees on deposits paid by banks, held in Deposit Insurance Fund (DIF)

(*continued*)

Table A.1. (*continued*)

1. Year	2. Statute	3. Name	4. Harm	5. Description	6. Size $ ($2022)	7. Eligibility	8. Administered by	9. Financing
1938	7 U.S.C. Chapter 36, Subchapter I (§§ 1501–1524)	Agricultural Adjustment Act of 1938, Federal Crop Insurance Program	Farmers, ranchers, livestock owners and others involved in agriculture	Federally paid or subsidized agricultural insurance for harm to 130 commodity crops due to disasters or economic conditions	Average annual payouts of $9.1 billion	Farmers, livestock owners, harmed by growing commodity crops in poor market conditions (low farm prices) or disasters	USDA	FCIP-selected private insurance firms sell heavily subsidized insurance to farmers. Catastrophes fully subsidized
1946	28 U.S.C. Chapter 171 (§§ 2671–2680)	The Federal Tort Claims Act	Personal injury or harms, property loss, or other harm due to federal actions	Authorizes plaintiffs to obtain compensation from the United States for the torts of its employees	Wide variation, $11 billion in 2022	Personal injury, loss of property, or death caused by negligence of a federal employee while acting in government capacity	Treasury	"Judgment Fund" pays court judgments and settlements of lawsuits against the government
1948	50 U.S.C. Chapter 52 (§§ 4201–4251)	Japanese American Claims Act of 1948	Loss of liberty, wages, property due to internment	First reparations to Japanese Americans	$36 million	Direct Victims	DOJ	Appropriations
1953	15 U.S.C. § 633 (Small Business Administration)	SBA Disaster Loan Program	Loss or damage to personal property or business, loss of income	Federally subsidized loans up to $2 million to repair or replace property, with uninsured damages following disasters	$53.6 billion in 2020	Businesses, homeowners, individuals, nonprofits located in declared disaster zones that have suffered substantial injury	SBA	Appropriations

Table A.1. (*continued*)

1. Year	2. Statute	3. Name	4. Harm	5. Description	6. Size $ ($2022)	7. Eligibility	8. Administered by	9. Financing
1958	38 U.S.C. Part II, Chapter 11	Veterans Disability Benefits	Injury, illness, disease, condition incurred or aggravated by service	Compensation (cash, housing loans, burial, job training, rehabilitation, and so on) to veteran dependents	$160 billion in $2022, total liability exceeds $2 trillion	Veterans with service-connected disability. FY2022 compensation to 5.5 million veterans, plus 476,427 survivors	VA	Appropriations (mandatory)
1958	38 U.S.C. Part II, Chapter 11	Veterans Medical Care	Injury, illness, disease, condition incurred or aggravated by service	VA health care medical care, dental, prescription and support for veterans and dependents	$98 billion in $2022, ten million enrollees	Veterans with recent service, service-connected disability, lower-income veterans, family members	VA	Appropriations (discretionary)
1962	19 U.S.C. § 1862	Trade Adjustment Assistance	Loss of job, income, source of wages	Compensates workers, communities affected by trade agreements, tariffs, imports, market disruptions	$634 million FY 2021	Workers showing that trade, market, or imports contributed to their loss of work or wages	DOL	Appropriations
1968	42 U.S.C. Chapter 50 (§§ 4001–4131)	National Flood Insurance Program (NFIP)	Personal injury, loss or damage to property, possessions due to flooding	Subsidized flood insurance to over five million property owners, renters	Paid out $7 billion in 2022	Homeowners, renters, small businesses or other organizations that suffer economic losses as a result of flooding	FEMA	Premiums and fees of flood insurance policies, borrows from Treasury when the balance insufficient

(*continued*)

Table A.1. (*continued*)

1. Year	2. Statute	3. Name	4. Harm	5. Description	6. Size $ ($2022)	7. Eligibility	8. Administered by	9. Financing
1969	26 U.S.C. § 9501	Black Lung Disability Trust Fund	Illness or death due to coal mining or living near coal mines	Compensation + medical coverage to coal miners/ others with lung conditions + survivors	Paid out $47 billion since 1970	Miners, dependents, residents near coal mines with Black lung or related illness	DOL/SSA	Excise taxes on mined coal. Paid into Black Lung Disability Trust Fund
1970	12 U.S.C. 1709, 1715(b)	Mortgage Insurance for Disaster Victims Section 203 (h)	Loss or damage to property due to disasters	Provides up to 100 percent financing for victims of disasters buy or rebuild if their homes damaged	In 2019, one hundred disasters eligible	Owners or renters of homes requiring reconstruction in presidentially designated disaster areas	HUD	Appropriations
1971	43 U.S.C. Chapter 33 (§§1601–1629h)	Alaska Native Claims Settlement Act	Loss of land due to government action	Authorized Alaskans received 44 million acres of public land and funding via 12 regional corporations	$963 million plus 44 million acres	All Alaska Natives (defined as ≥25 percent Alaska Indian, Eskimo, or Aleut) alive when Settlement Act enacted	U.S. Treasury	Alaska Native Fund, federal oil and gas leases, federal appropriations
1974	29 U.S.C. Chapter 18 (§§ 1001–1461)	Pension Benefit Guaranty Corp	Loss of private-sector defined benefit pensions	Protects pension benefits in private defined benefit plans	Paid out $7.2 billion in 2022	Workers, retirees, and families in private-sector defined benefit pension plans	DOL (PBGC)	Insurance premiums paid by companies, investment income on holdings

Table A.1. (*continued*)

1. Year	2. Statute	3. Name	4. Harm	5. Description	6. Size $ ($2022)	7. Eligibility	8. Administered by	9. Financing
1974	N/A	Tuskegee experiment	Denying treatment to 399 men infected with syphilis	Government settlement with victims or families for Tuskegee experiment conducted from 1932 through 1972	$12.8 million paid to victims and control group	399 individual victims of Tuskegee medical experiment, plus control group, families, and heirs	CDC	Appropriations
1978	Secretary's Indian Water Rights Office enacted Indian water rights settlement statutes	Indian Water Rights Settlements	Loss of water rights, control, or access to water due to treaties	Compensating for denial of water rights, in violation of 1908 SCOTUS ruling on Tribal water rights	> $7 billion authorized	Forty Indigenous communities with reservations established through treaties that have water rights	DOJ, DOI	Trust Fund, Discretionary and mandatory appropriations, Judgement Fund, $1.7 billion infrastructure law
1978	43 U.S.C. § 1842	Fishermen's Contingency Fund	Loss of income, livelihood due to oil and gas activity on outer continental shelf	Compensates fishermen for losses, damage to vessels, catch, fishing due to oil and gas activity	$349,000 in 2021	U.S. fishermen on the U.S. outer continental shelf	DOI (National Marine Fisheries Service)	Revolving fund of fees paid by offshore oil and gas interests
1979	34 U.S.C. § 10281	Public Safety Officers Compensation Fund	Personal injury, bodily harm, disability, or death	Compensation to federal, state, local law enforcement killed or disabled in the line of duty	$119 million in 2021, $570 million from 2013 through 2021, lump-sum payments	Law enforcement, fire, emergency employees disabled or died in line of duty, education funds for survivors	DOJ	Appropriations

(*continued*)

Table A.1. (*continued*)

1. Year	2. Statute	3. Name	4. Harm	5. Description	6. Size $ ($2022)	7. Eligibility	8. Administered by	9. Financing
1983	34 U.S.C. § 20106	Antiterrorism Emergency Reserve	Injury, mental or physical harm, loss of property, or death	Reimburses terrorism victims and survivors for medical, mental health, property loss, repair, funerals	$26.9 million in FY 2019	U.S. victims of physical or emotional injury or death by international terrorism; Payable to victim, legally designated representative	DOJ	Fines, penalty assessments, bond forfeitures from defendants convicted of crimes
1986	42 U.S.C. Chapter 6A, Subchapter XIX (§§ 300aa-10–300aa-34)	Vaccine Injury Compensation Trust Fund	Injury or death arising from vaccination	Compensation for injury or death from vaccination by CDC recommended vaccines	Over $5 billion paid to about 10,000 claimants	Individuals injured, death due to adverse effect of CDC recommended vaccine, and survivors	HHS	Excise tax on vaccine manufacturers of 75 cents per dose of vaccine administered
1986	33 U.S.C. Chapter 40, Subchapter I (§§ 2701–2720)	Oil Spill Liability Fund	Loss or damage to property due to oil spills	Provides funds for federal responses to oil spills; compensates for damages not directly paid by the polluter	$3.4 billion through 2018	Individuals, contractors, tribes, others claiming for damages or payment of clean-up services	DOE, FEMA	Per barrel excise tax on domestic/imported crude (9 cents per barrel); tax suspended in 2019; plus fees, fines
1986	48 U.S.C. Chapter 18	Marshall Islands Nuclear Claims Tribunal	Illness, disease, or death due to radiation exposure, suspended 2011	Compensation, apology to Marshall Islanders for personal injury, property damages, due to U.S. nuclear tests	$834 million in payouts to 2,000 people until 2004	Marshall Islanders exposed to radioactive fallout from U.S. nuclear tests	Nuclear Claims Tribunal	Appropriations

Table A.1. (*continued*)

1. Year	2. Statute	3. Name	4. Harm	5. Description	6. Size $ ($2022)	7. Eligibility	8. Administered by	9. Financing
1986–2005	42 U.S.C. Chapter 6A, Subchapter IX (§300c22)	Ricky Ray Hemophilia Relief Fund Program	Contracting HIV from tainted blood	Compensation to individuals with hemophilia, who contracted HIV through tainted blood	>$880 million (in $2022) paid to 7,200 individuals	Persons with blood disorders who received tainted blood and acquired HIV, including HIV+ spouses and children	HHS	Appropriations
1988	50 U.S.C. Chapter 52 (§§ 4201–4251)	Civil Liberties Act of 1988 (Japanese Americans)	Loss of liberty, wages, property due to internment	Reparations of $20K to Japanese American survivors for wartime relocation, internment, loss of property	$1.6 billion in payouts, $50 million for research, education	Direct victims (any survivor of wartime relocation, internment), public via education	DOJ	Appropriations
1988	42 U.S.C. Chapter 68 (§§ 5121–5208)	FEMA Individual Assistance Programs	Harms suffered due to disaster (personal injury, loss of income, property, and so on)	Compensation to individuals or households with uninsured expenses due to natural disaster	$42.1 billion FY 2020	People with uninsured necessary expenses and serious needs that cannot be met in other ways	FEMA/ Disaster Relief Fund	Appropriations
1988–2006	1981–2005	BRAC Adjustment	Loss of job, income due to closing military bases	Compensation for economic impact due to five rounds of base closures	> $43 billion	Individuals and communities affected by BRAC	DOD EDA (DOC) and SBA	Special BRAC account with multi-year appropriations

(*continued*)

Table A.1. (*continued*)

1. Year	2. Statute	3. Name	4. Harm	5. Description	6. Size $ ($2022)	7. Eligibility	8. Administered by	9. Financing
1990	16 U.S.C. Chapter 61 (§§ 4101–4107); 16 U.S.C. Chapter 38 (§§ 1801–1891d)	Fishery Disaster Assistance	Loss of income, equipment, and livelihood, or damage, due to fishery disasters	Compensation for economic losses or injury due to fishery disasters	> $1.15 billion since 1990 for seventy-two fishery disaster designations	Individuals who suffered economic or property loss due to reduced capacity to fish due to fishing disasters	NMFS, NOAA, DOC	Appropriations; also in partnership with states, and states supplement
1990	42 U.S.C. § 2210 note	Radiation Exposure Compensation Trust	Illness, disease, or early death due to radiation exposure	Apology, restitution to individuals exposed to nuclear radiation from U.S. tests in 1945 to 1962, who developed illnesses	$3.5 billion since 1990 to > 40,000 victims and survivors	Individuals exposed to uranium through work, transport, downwinders; diagnosed with compensable disease; and descendants	DOJ	Trust Fund
2000	42 U.S.C. Subchapter XVI (§§ 7384–7385s-16)	Energy Employees Occupational Illness Compensation Program	Injury, disease, loss of life or working ability	Compensation to individuals for exposure to nuclear radiation in U.S. testing program	> $28.3 billion to date to ~135,000 victims and survivors	Employees, contractors, downwinders, others, diagnosed with illness related to exposure to radiation from U.S. nuclear tests	DOL	Mandatory appropriations

Table A.1. (*continued*)

1. Year	2. Statute	3. Name	4. Harm	5. Description	6. Size $ ($2022)	7. Eligibility	8. Administered by	9. Financing
2001	49 U.S.C. § 40101	September 11th Victim Compensation Fund	Injury, disease, death, mental health conditions due to 9/11	Compensation to victims or survivors of 9/11 attacks; plus long-term illness in first responders, others in the area	> $9 billion, more than 34,400 claims	Individuals present at or near the Exposure Zone, with qualifying injury or condition, through May 30, 2002	DOJ	Direct appropriations; and fee surcharge on U.S. visas
2001	26 U.S.C. § 1 note	Victims of Terrorism Tax Relief Act	Redress for 9/11 victims	Tax relief for victims of terrorism (for example, 9/11 or Oklahoma City Bombing)	Estimated $358 million from 2002 through 2011	Victims of a terrorist attack or a survivor of someone who died due to an attack	Treasury	Tax exemption
2004	18 U.S.C. § 3771	Justice for All Act	Redress for individuals wrongfully convicted of crimes	Compensation for individuals wrongfully convicted of federal crimes and imprisoned or put to death	$50,000 per year for imprisonment; $100,000 per year for death	Must be wrongfully convicted of a federal crime	DOJ	
2014 (retroactive to 2011)	15 U.S.C. Chapter 15, Subchapter II (§§ 714–714)	Market Facilitation Program	Loss of farm income, property, equipment due to trade or markets	Provides payments for loss of income to many producers affected by trade	$14.5 billion in 2021	Farmers, growers, crop owners with average adjusted gross income up to $900,000	USDA	

Source: Authors' tabulation and government websites and statutes.

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What Makes a Reparation Successful? A Discussion to Inform Design of Reparations to Black Americans

KATHRYN ANNE EDWARDS, LISA BERDIE, AND JONATHAN W. WELBURN

Reparations policies that seek to make amends for a harm incurred face exigent challenges. In this article we focus on what makes reparations successful and what policy components are necessary, if not sufficient, for success. To study the success of reparations policy design we employ a case study approach. Our analysis investigates the motivation, design, implementation, and impact of past policies to understand what has been successful or unsuccessful within each component of the policy in each historical case. Ultimately, our discussion identifies patterns in the creation and execution of reparations policy that offer important considerations for policies that would provide reparations to Black Americans.

Keywords: racial equity, reparations for historical injustices, reparations to Black Americans, case study analysis, policy evaluation

A reparation is the act of repairing, making amends, or satisfying injury; a group receives some form of compensatory benefit for a harm incurred, paid by an institution with some relation to the injuring party. Because they are predicated on an irreversible harm, reparations are positioned to be emotionally charged and unsatisfactory; the preferrable outcome is to not be harmed in the first place. In addition to these existential challenges are the exigent ones: to be enacted as a policy, reparations must be designed, funded, and administered. In this article, we focus on an additional challenge: determining what makes a reparation successful.

As a principle, success of a policy hinges on the satisfactory execution of agreed upon aims. In this way, success influences most aspects of design as an organizing principle. Yet success is an odd, and possibly offensive, notion in the context of reparations, given that it centers on amending for a severe harm. If a victim cannot be made whole, then what is a reparation policy's achievable aims? That is the research ques-

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tion we approach in this article. Although our research is of interest to any reparation, our goal is to inform the design of reparations to Black Americans for slavery and its aftermath of continuing harms, and we draw direct lessons for that context.

Reparations to Black Americans have been discussed in both the existential and exigent context, questioning, respectively, if reparations are necessary or if reparations are feasible. Yet, the notion of success is integral to both and, indeed, is often cited in arguments that either assert that reparations are unnecessary or that reparations are infeasible. More than 150 years of reparations proposals to ameliorate the harms of slavery have focused on redressing its aftermath: building Black wealth, improving Black economic status, and supporting the political and social enfranchisement of Black Americans (Darity and Mullen 2020). The difficulty in designing reparations that could achieve these ends has often been used to advocate against enacting them at all. We dub this—that inequality and disenfranchisement is both a motivation for (as a part of the harm) and an argument against (as a barrier to success) reparations—the effectiveness paradox. From an economic lens, the effectiveness paradox is that economic inequality between Black and White Americans is one argument for reparations, but because that inequality is so great, reparations would be an ineffective policy and therefore should not be pursued. A similar effectiveness paradox could be made from a social lens: the entrenched animosity between the races is a reason to enact a policy of acknowledgment and redress, but reparations may stoke further resentment and therefore should not be pursued. Success, and what defines it, is integral to the design of any policy, including reparations, and we note, in particular to reparations to Black Americans.

We aim to be as clinical as possible in assessing past policies, but would like to acknowledge before proceeding that the harms that form the basis of the policies we study and policy we aim to inform are severe. Our study in no way intends to make light of those harms, or to rank them, though will we not have space throughout to enumerate them fully and are critical in comparing the policies in response to them.

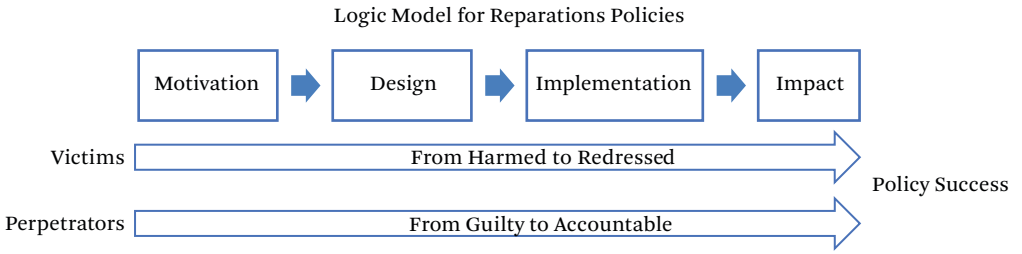
RESEARCH APPROACH

To study the success of reparations policy design, we use a case study approach. Case study analysis enables us to explore examples and experiences of reparations, glean lessons from what they have been able to achieve and where they have fallen short, and test the conditions that might be necessary or sufficient for policy efficacy. Our analytical method is to select a set of reparations to study through a logic model in order to systematically identify issues related to policy success, despite a small sample. Logic models allow us to articulate a theory of change: what components of a program or policy may lead to a desired outcome, and which activities, in which sequence, are necessary and sufficient to affect change.

Figure 1 presents a logic model, which describes, generally, how reparations policies might affect change. As a policy, reparations follow a typical path: motivation, design, implementation, impact. But this logistical progress of a policy's execution must achieve two transformations in terms of reparations: the victims must go from harmed to redressed, and the injurers from guilty to accountable for the harms perpetrated. In practice, the content of each stage—the specific motivation, the details of design and implementation, and so on—is informed by the harm, victim, and perpetrators. The model is not meant to detail how to design a reparation, but convey what it needs to achieve. Each component must contribute to the ultimate perceived success and legacy.

Challenges to parsing extant reparations into a tidy logic model are numerous. To start, disagreement about whether payments even constitute reparation is common. For example, in 1924, the city of Manhattan Beach, California, claimed eminent domain and seized beachfront property of the Bruce family, who were Black and operated a resort that was open and catered to other Black vacationers at a time when few similar establishments existed. Nearly a century later, Los Angeles County returned the land to the Bruce family (California

Figure 1. Logic Model for Reparations Policies



Source: Authors' rendering.

Office of Governor Gavin Newsom 2021). Some have lauded this as reparations for the racist, unjust seizure of land from the Bruces (Holloway 2021). Others argue this land repatriation does not rise to the level of reparation because it does little to address the existing and lasting structures that contribute to highly unequal real estate access and holdings (Kahrl 2023). Thus what constitutes a reparations policy may be contested as much as whether the reparations policy is well designed, well implemented, and successful.

Furthermore, selecting policies for a study can quickly become problematic because of the nature of the selection criteria. Picking cases with the worst harm or the best response would involve categorizing the harms incurred by severity, which minimizes harms experienced, or positively selecting on policy. There is no model reparation because there is no model harm. We thus are unable to select exemplar or outlier policies. Harm being so vast and yet specific renders typification of reparations unwise. Instead, we select cases that can provide insight into what successful reparations entail. At a minimum, they had to have been subject of sufficient research and analysis; it is beyond the scope of this article to extend the research about any specific reparation. Beyond that, we sought examples based on having a variety of features, apart from the policy itself. We looked for institutional variation, or that the injuring and compensating party included multiple governments in multiple time periods. We also looked for differences in the victim group, again in multiple time periods and multiple contexts. We examine these cases relative to a theory of change about how reparations—policies that intend to ameliorate a harm—can be successful.

CASE STUDIES

Case studies offer the advantage of inductive assessment. Rather than looking backward to find supporting evidence for a posited theory, hypothesis, or aim, case studies move forward, aggregating details into patterns, and patterns into lessons. Case study investigations are not a superior method so much as an alternative one, one appropriate in policy implementation analyses.

Our case study analysis investigates the motivation, design, implementation, and impact of past policies to understand what have been successful or unsuccessful within each component. This article takes each of the identified case studies in turn, providing a brief summary and a discussion about the lessons each case provides a better understanding effective reparations policy. The scope and length of this article does not allow us to give a full accounting of the depth of the experience that necessitates a reparation policy. Instead, we distill the events into a policy analysis, but recognize that we do not have space to properly account for the enormity of harm.

The Emancipation of the Russian Serfs

In 1861, Tsar Alexander II ended the practice of serfdom in Russia and emancipated the serfs, which made up a third of the population at the time—twenty million people (Lynch 2003; Pereira 1980). Prior to emancipation, serfs were bound to the land they worked and the nobleman who owned that land. Serfdom was similar to chattel slavery in the United States, but serfs

were not bought, sold, and transported off of the land they were tied to. Emancipation changed the legal and political status of the former serfs, extending to them the right to hold property and enter into contracts (Zenkovsky 1961). It also brought a process to redistribute land to the newly freed serfs, but this redistribution of land was tempered by concessions to landowners (Zenkovsky 1961). Landowners were compensated monetarily for their loss, kept about two-thirds of the land, and had first pick of which land to retain (Markevich and Zhuravskaya 2018; Nafziger 2014). Land was then allocated to collectives of newly freed serfs. Together these communes of peasants were required to make what were called redemption payments to the state over a forty-nine-year period (Nafziger 2010).

Scholars have often tried to assess the value of the land transfer at emancipation; there has been heavy critique and debate about whether the land provided to the free serfs was too little at too high a cost (Hoch 2004; Zenkovsky 1961). Others have sought to understand the impacts of emancipation on the country's social and political structures (Pushkarev 1968; Mironov 1985).

We are most interested in how the remuneration provided to former serfs could be understood as a successful or unsuccessful reparation policy because it was not named or declared as such upon enactment. Outwardly, emancipation of the serfs in Russia appears to be a reparation similar to what was proposed just four years later during the U.S. Civil War for freed slaves—freedom from bondage and land transfer (Sherman 1889). That the emancipation of the Russian serfs was contemporaneous to the emancipation of the American slaves make this a particularly relevant case for understanding what success might have involved—and thus need to address—in the case of Black Americans. We find that the motivations for emancipation of the serfs were not rooted in an identified harm or an acknowledged one. Instead, emancipation and land redistribution were propelled by economic stagnation in the wake of the Crimean War, 1854 to 1856, and the recognition that the feudal social organization was obsolete, hindering Russia's growth (Zenkovsky 1961). A secondary motivation was to suppress serf uprisings, though its success in tempering public outcry is limited (Finkel, Gehlbach, and Olsen 2015; Pushkarev 1968). The policy of emancipation thus did little to recognize the oppression and victimization of the serfs under Russian feudalism, or the role that either the state or the landed gentry played in exploiting labor from the serfs.

Even if we were to set aside motivation, the design and implementation of emancipation did little to address the class and economic disparities that resulted from the feudal system. Although some analyses show that emancipation improved the quality of life of former serfs, (Markevich and Zhuravskaya 2018), and that inequality in Russia was not remarkable relative to its contemporaries or to many advanced economies today (Lindert and Nafziger 2014), emancipation did little to fundamentally change the class system codified by the feudal system (Mironov and Eklof 2000 in Lindert and Nafziger 2014). Thus the policy of emancipation neither healed the former serfs of the harms suffered during serfdom, nor held individual or institutional perpetrators accountable. Impact, when considered from the logic model's aims of redress and accountability, was in this case negligible. Emancipation reified existing divisions between the nobility and peasantry. From this case study, we conclude that transactional aspects of policy are insufficient as a reparation if the substantive aspects of policy are lacking. Reparations require more than payment—even if redistributive—to be successful. Even though the value and extent of remuneration is debated in this case, what is uncontested is the reification of power within Russian political and economic elites. Dual transformation is critical to reparative policy.

Indian Claims Act

The Indian Claims Act of 1946 created a judicial process through which tribes and Indigenous communities could seek restitution from the U.S. government for loss of land and other harms that occurred during European expansion (Kuykendali et al. 1978). The act allocated federal monies to settle claims and created the Indian Claims Commission (ICC) to adjudicate them (Lieder and Page 1997). Until the commission was dissolved in 1978, it paid out more

than $1 billion in claims to 176 tribes, which worked out to under $1,000 in 1997 real dollars per tribe member (Lieder and Page 1997). After 1978, all unresolved cases were transferred to the U.S. Court of Federal Claims who closed the final case filed under the ICC in 2006 (U.S. Department of Justice 2020).

There were several motivations for establishing the Indian Claims Commission. First, it built on decades of arbitration that sought to address broken treaties and activism to fully recognize tribal sovereignty and rights (Kuykendali et al. 1978). Second, it was established in the immediate postwar era, when the U.S. government was under pressure to both recognize the contributions of native soldiers who had fought for the United States and to address the antidemocratic legacy of colonialism as the Cold War intensified (Kuykendali et al. 1978; Derocher 2021). Finally, the commission was established as a space to address a backlog of cases that dealt with land disputes between the American government, tribes, and individual tribal citizens (Kuykendali et al. 1978).

It is difficult to claim that the ICC was motivated by guilt, even if it was a mechanism for adjudicating a specific harm. The bill that established the ICC included language that it was designed to "right a continuing wrong to our Indian citizens," but no widespread admission that the motivation for establishing the commission was to provide redress for broad and systematic grievances. A statement by President Truman averred that

> The bill [to establish the Indian Claims Commission] makes perfectly clear . . . that in our transactions with the Indian tribes we have at least since the Northwest Ordinance of 1787 set for ourselves the standard of fair and honorable dealings, pledging respect for all Indian property rights. Instead of confiscating Indian lands, we have purchased from the tribes that once owned this continent more than 90 percent of our public domain, paying them approximately 800 million dollars in the process. It would be a miracle if in the course of these dealings—the largest real estate transaction in history—we had not made some mistakes and occasionally failed to live up to the precise terms of our treaties and agreements with some 200 tribes. But we stand ready to submit all such controversies to the judgment of impartial tribunals. We stand ready to correct any mistakes we have made. (Kuykendali et al. 1978, 5)

The motivation for the ICC was couched in the legal and mechanistic requirements to ensure pre-negotiated property rights.

The design and implementation of the ICC had significant criticism. For instance, tribes could make a claim to be compensated for land that was taken or previously compensated at "unconscionable consideration" below its fair market value, but it was difficult to prove ownership or determine what fair market value was (U.S. Department of Justice 2020). The ICC was only able to award compensatory redress in cases where tribes could prove that they had not been paid the fair market value by the government at the time of purchase, and no interest could be awarded (Tiro 2007). Disputed valuations of claims and governmental offsets led to the denial of many of the claims (Wilkins 2013). Awarded claims were placed in a trust, which was subject to numerous allegations of mismanagement (Newton 1975). Further, all awards were monetary, disregarding petitions for land rights, and often deducted "offsets" from the overall award in recognition of previous, albeit unrelated, disbursements that the U.S. government made to tribes (Tiro 2007; Luebben and Nelson 2002).

The ICC is of interest as a case study for reparations policy because the U.S. federal government set aside resources to specifically address harms against a particular group, and established a separate civil system to adjudicate claims. However, the ICC was not motivated, designed, or implemented to change the status quo, and the ICC "should be viewed more as a continuation of the past than a break from it" (Wishart 2004). Much like in the emancipation of the Russian serfs, the lack of motivation to redress or hold the nobility accountable guaranteed the policy was unsuccessful at achieving either. The ICC also offers a design lesson: of paramount importance is an agreed definition of the harm. For tribes, at issue was the loss of ancestral lands; for the U.S. government, at issue was property and contract rights. Although

notionally a mechanism to redress harm, the ICC deferred to the government's definition of harm, and not that of tribes. Even if the ICC's payment were flawless in implementing payment of successful claims, which as noted was not the case, the policy would be unsuccessful as a reparation for this reason.

Syphilis Study at Tuskegee

The six hundred participants in the Public Health Service Study of Untreated Syphilis in the Male Negro in Macon County, Alabama, now called the USPHS Syphilis Study at Tuskegee (Centers for Disease Control and Prevention 2022) were recruited in 1932 by the U.S. Public Health Service to participate in a research study in exchange for medical exams and meals. The majority of the men had syphilis at recruitment, but the participants were manipulated about the nature of the study and their own condition. Participants were told that they had bad blood and were not given either full information about their diagnosis or the purpose of the study in relation to it (Warren, Hodge, and Gallagher 2019). Despite effective treatment of penicillin becoming widely available in the years following the study's start, none of the study participants were offered the medicine, nor were their wives and children.

The Associated Press publicized the existence of the experiment in 1972 (Heller 2017). The Department of Health, Education, and Welfare established an ad hoc advisory panel to review the study because many in the department and Congress were unaware of its existence. The panel concluded that the study was unethical when it was created in 1932, that it was unethical when the participants were not given penicillin by 1953 at the latest, that it should be immediately ended, that the participants should receive specialized medical care, and that Congress should enact more protections for human subjects (U.S. Department of Health, Education, and Welfare 1973).

There are two parallel tracks of success in reparations, that of the victim's redress and the perpetrator's accountability. The ad hoc panel declared a clear motivation for both groups: the study was unethical from the start and both it, and the practices that allowed its creation, must be halted. First, we consider the victims and the change from harmed to redressed. The policy response to the Syphilis Study at Tuskegee was not coordinated under a single institution or act, nor could it be termed a reparation (Tuskegee University, n.d.). The survivors received monetary compensation, health care, and an official apology, but in disparate fashion. In 1973, the survivors filed a class action lawsuit resulting in a $9 million settlement. Congress mandated the creation of the Tuskegee Health Benefit Program to provide medical and burial care to survivors, and later their widows and children. In 1997, President Bill Clinton formally apologized for the study. The families of the victims still seek further restitution (Associated Press 2017a), including funding for a scholarship program established for descendants of the study's participants (Voices for Our Fathers Legacy Foundation, n.d.b.) and funding for the Tuskegee Human and Civil Rights Multicultural Center (Tuskegee History Center, n.d.). This response is piecemeal enough to not be considered intentionally designed and implemented.

Next, we consider the perpetrators. In this respect, that of transforming from guilty to accountable, the policy response to the Syphilis Study at Tuskegee could be argued to be a success, and it is a reason why this case study is of interest to our investigation. The panel's recommendations for research practices were incorporated into legislation in less than two years, forever changing human subjects research in the United States and making a repeat of the conditions around the study hard to repeat. The Syphilis Study at Tuskegee was formative in the adoption of the National Research Act of 1974, which codified certain ethical practices for research into law and created the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. Later, the Belmont Report, created by that commission, outlined ethical principles for research, and cited the Syphilis Study at Tuskegee as a motivation to codify justice into research practices (National Commission 1979). The question is not how much research practices and the federal government have changed, but to the extent to which it was due to the revelations of the study and the panel responding to it. Senator Edward Ken-

nedy held hearings in 1973 on human experimentation that influenced the National Research Act, which he sponsored, but those hearings were not limited to the Syphilis Study at Tuskegee (U.S. Congress 1973).

Taken together, the ad hoc panel's report, the creation of the Tuskegee Health Benefit Program, the lawsuit, the portions of the National Research Act dedicated to ethical practices, and the presidential formal apology had all the trappings of a reparation without the cohesion of it. However, these offer lessons for understanding successful reparations policy. The initial acknowledgment of harm stemmed from an investigatory panel that considered the issue, weighed in on wrongdoing, and gave a plan for action. From our perspective, a key shortcoming of the ad hoc panel was that it was established to evaluate the study, not its victims, so that the perpetrators had a pathway to reform but the victims did not have a similar pathway to redress.

Since the Syphilis Study at Tuskegee ended, the victims and their families have, after considerable effort, successfully been awarded compensation for their harm and had at least one formal apology. They continue to advocate through the Voices for Our Fathers Legacy Foundation for memorialization and education about the study and its victims (Voices for Our Fathers Legacy Foundation, n.d.a). Both suggest that a victim-centered policy would consider legacy as a key component of success. The current legacy of the Syphilis Study at Tuskegee is largely considered to be negative. Any cultural changes that were embedded into research and government practices were insufficient to repair relationships. The use of Black men in medical experiments directly contributed to distrust in the Black community of the medical profession and medical services (Alsan and Wanamaker 2018). Lack of clear accountability and insufficient attention to victims' needs and wants defines the legacy.

German Reparations for the Holocaust

The German government has provided restitution to victims of state violence suffered during the Holocaust under the National Socialist (Nazi) regime, most of which targeted the Jewish population in Germany and Poland, in a complex reparations program. At the immediate close of the war, the British, French, and American governments oversaw the initial restitution, which included programs that returned stolen property, provided healthcare and other benefits, and granted pensions to victims and their surviving dependents. In 1952, the West German government negotiated a reparations program with Israel, and the Conference on Jewish Material Claims Against Germany, or the Claims Conference, a representative group of victims' groups, and signed the program into law in the Luxembourg Agreement (Heilig 2002). The Claims Conference became the primary body responsible for negotiating with the German government for any payments and policies afterwards.

Germany has paid out an estimated €78 billion in total reparations (Federal Ministry of Finance 2018), starting with an initial payment to the state of Israel to support Jews who resettled in the new country in 1953. There is no single reparation benefit, but instead a set of arrangements and commitments that have evolved over time in both who is being compensated, who is compensating, and what specifically they are addressing (for a summary of the details, see Federal Ministry of Finance 2018). Some of these arrangements were negotiated by the Claims Conference directly with the German government, both before and after reunification, some were moderated through the Hague, and some with companies that used Jewish slave labor (Claims Conference 2021). Over time, victim groups expanded to include the Righteous Gentiles who risked their lives to save Jews during the Holocaust (Claims Conference 2021) and victim payments expanded for specific victims of the Holocaust: those who were the subject of medical experiments, and children who were separated from their parents and sent out of the country (Kindertransport) after Kristallnacht (Claims Conference 2021). Recently, the Claims Conference negotiated payments for home care for elderly survivors, and one-time payments to help with the hardships created by the COVID-19 pandemic (Gross 2020).

As the number of living direct victims and survivors decreases over time, the German government has expanded its broader activities

that acknowledge and communicate the lessons learned from Nazi-perpetrated atrocities and Germany's approach to atoning for those crimes. In official documentation, the government explains that reparation payments will eventually end, but that should not mark the end of the program. Instead, against a backdrop of increasing anti-Semitism and Holocaust denial, there is a focus on commemorating what happened before and after 1945, on how the young democracy of the Federal Republic of Germany dealt with its National Socialist past, what lessons were learned and are being learned from the crimes against humanity committed by the National Socialist regime, and how this can be communicated to future generations in a meaningful and lasting way (Federal Ministry of Finance 2018).

For our evaluation, this case study is of interest because it demonstrates how accountability can evolve over time, enwrapped as it is with the notion of legacy. West Germany's apology was part of the original agreement in Luxembourg in 1952; after ending Communist rule, East Germany's first freely elected parliament in 1990 apologized as well (Laub 1990). But as recently as 2022, Germany's payment for reparations includes funds earmarked for education about the Holocaust (Solomon 2022). In addition, the Ministry of Finance is in the process of digitizing all claims, testimonies, and payments made as part of the reparations program and making them publicly accessible. Some have argued that Germany's view of reconciliation is a permanent process, rather than a one-time act of apology, and this position has helped transform Germany in international relations, even today (Feldman 2012).

Also of interest for design and implementation is the governance of German reparations. The Claims Conference is a body that both advocates for reparations, negotiates directly with the government and private actors, and develops plans for implementation. The presence of an external, representative body helped ensure the reparations program evolved over time to address different and arising needs. It facilitated payment from multiple government institutions and private companies. Notably, German reparations are not a fixed amount that is then allocated, but instead a continual process of claims. However, the Claims Conference is not without criticism, including several accusations of misuse of funds by Claims Conference managers and fraud (Reiermann, Schult, and Schulz 2010). In 2013, a former director was sentenced to eight years in prison after successful prosecution by the U.S. Attorney for the Southern District of New York (2013). In addition, some aspects of the Claims Conference are not replicable. The organization originally fostered payments out of country, from Germany to the newly established Israel, and had the precedent of payments and assistance from occupying military victors. The number of claimants is also small relative to the number of victims because the majority of victims were murdered.

Combined, the positive lessons from this policy—the revisitation of what accountability entails and the permanent representative body for claimants—suggest that reparations design and implementation is improved by some kind of continuing, recurring assessment of the policy. Reparations in the German context, as they have evolved over time, are a living policy rather than a finite one. Although the negotiations over German payments to victims of the Nazi regime started as delimited and one-time payouts, social and political pressure from both within and outside Germany catalyzed ongoing conversations and negotiations to repair and redress victims, and to hold institutions to account. There may be reasons why the financial aspect of policy should or should not be ongoing versus one-time transfers of resources. That depends heavily on the harm and the scope of compensation in response.

Japanese Internment

Pursuant to Executive Order 9066 issued by President Franklin Roosevelt in 1942, more than one hundred thousand Japanese Americans were forcibly relocated from their homes in Washington, Oregon, California, and Arizona (National Archives 1942; Kim 1986). Many left property behind or liquidated their property and other assets at a fraction of their worth. Following World War II, President Truman authorized the payment of claims to freed Japanese Americans to be compensated for property through the Evacuation Claims Act, but few were paid and the amount paid was

small relative to property lost (Wei 1993). After continued pressure, Congress in 1980 created the Commission of Wartime Relocation and Internment of Civilians to study the decision to incarcerate Japanese Americans, including whether it was justified by military necessity. It released its report, *Personal Justice, Denied* in 1982 (Commission on Wartime Relocation of Internment and Civilians 1982). The next year, it followed with recommendations for an apology and monetary compensation.

The Civil Liberties Act of 1988 enacted reparations to Japanese Americans, both U.S. citizens and residents, whom the U.S. government had interned during World War II. The act also provided funds to repay Aleut communities who were relocated during the war, and whose property was damaged or destroyed by the United States.[1] The funds provided $20,000 to each eligible Japanese American and $12,000 to each eligible Aleut. Payments were accompanied with an apology; the federal government acknowledged the harm, admitted culpability, and offered reparations as redress.

Returning to the pathways of our logic model, we consider the victim track and perpetrator track. The pressure to enact reparations came from the Japanese American Citizens League (JACL), an Asian American civil rights association established in 1929. Rather than a multidecade campaign, the push for reparations was not officially adopted by the JACL until its 1978 convention, when a resolution passed to call on Congress for an apology and payment of $25,000 (Japanese American Citizens League 2022b). Earlier, the JACL had worked to bring awareness to the issue, without demands for redress. This reflected a tension within the Japanese American community between older generations, who wanted to move on from their imprisonment, and younger generations, who wanted to bring attention to racial oppression (Tateishi 2020). This conflict was reconciled by the mutual agreement among the Japanese community that internment, aside from direct harm to victims, was a violation of the Constitution and American principles that promise the right to liberty and property (Tateishi 2020). Thus an aim of the victims was the reconciliation of democratic principles.

These principles were directly incorporated into policy design, which is the key reason we consider this case study. The Commission on Wartime Relocation and Internment of Civilians, in its report to Congress, articulated that the target of reparations policies is not solely the victims, but the perpetrators:

> It is well within our power, however, to provide remedies for violations of our own laws and principles. This is one important reason for the several forms of redress recommended below. Another is that our nation's ability to honor democratic values even in times of stress depends largely upon our collective memory of lapses from our constitutional commitment to liberty and due process. Nations that forget or ignore injustices are more likely to repeat them.

One motivation for redress is the *violation* of principles, the other motivation is *preservation* of them. This enumerates a benefit from reparations for the perpetrator beyond accountability, which in our evaluative view, expands the notion of policy success.

As for design, the payment of a flat monetary amount was held by advocates of the reparations to be symbolic, a way to call attention to the issue for nonvictims, rather than fully make victims whole for what was lost (Tateishi 2020; Rosario 2020). Success in the case of Japanese reparations comes from the victim's aims being met. What Congress adopted in 1988 was similar to what the JACL resolved in 1978, with the difference of $5,000. That awareness of the harm incurred is integral to legacy, another key motivator for reparations (Hatamiya 1993).

In regard to implementation, like the Syphilis Study at Tuskegee, an official, multiperson panel tasked with assessing the harm created a clear pathway for action in response. The commission's scope was broader and focused

1. Public Law 100–383. To implement recommendations of the Commission on Wartime Relocation and Internment of Civilians (1998), https://www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg903.pdf (accessed March 20, 2023.

on the victims in addition to the circumstances leading to transgression. It also took as part of the response the need to prevent something similar from occurring and included a mandate for creating a collection in the National Archives of all of the documents and testimony collected in the course of the investigation (Commission on Wartime Relocation of Internment and Civilians 1982, 1983).

Finally, of additional interest for our evaluation of success in reparations is that Congress was not inhibited by past redress attempts. The commission acknowledged that prior payments had been made, including the Evacuation Claims Act in 1948 and an adjustment made by the Social Security Administration in 1972 to replace internment years with wage contributions for the calculation of benefits (Commission on Wartime Relocation of Internment and Civilians 1982, 1983). However, the commission estimated that the loss to income and property, in 1983 at their writing, was up to $2 billion, far below prior payments. Yet it declared that no cash amount would make victims whole because the stigma, trauma, suffering of their experience has no monetary equivalent. Neither of these facts—that victims had not been given enough, but that enough was an impossible concept relative to harm—were barriers to acting.

South African Apartheid

The apartheid system of government in South Africa, which began in 1948 and continued until a new constitution took effect in 1994, was built on the oppression of the majority Black population. The severe curtailing of civil and economic rights, property and land appropriation, and loss of life were common for the Black population living under apartheid (Clark and Worger 2022). As newly elected president, Nelson Mandela oversaw the creation of a Truth and Reconciliation Commission (TRC) in 1995, a legislatively constituted group that investigated the human rights abuses that occurred under apartheid between 1960 and 1994.

The TRC created a subcommittee, the Committee on Rehabilitation and Reparations, to investigate human rights abuses committed in the specified time period and make policy recommendations in response. The TRC released its findings in seven volumes, beginning in 1998 (Tutu et al. 1998).

The Committee on Rehabilitation and Reparations interviewed thousands of victims and explored the political, social, and psychological motivations and enablers for human rights abuse (Tutu et al. 1998). Its recommendations for reparations were an ambitious program of individual grants for victims; administrative assistance for important symbolic measures, such as procuring death certificates and headstones for those murdered; community and national benefits to rename buildings and streets, erect memorials, and a remembrance day; comprehensive community healing through investments in health care, housing, and others; and institutional reform (Truth and Reconciliation Commission, n.d.). Acting on these recommendations became the subject of deep political struggle and most were not realized (Colvin 2006). The government of Mandela's successor, Thabo Mbeki, authorized one-time payments to those who testified in front of the TRC, about eighteen thousand individuals, and pursued community economic development programs (Colvin 2006; Gready 2012; United States Institute of Peace 1995).

As a case study, the response to apartheid considers a harm enormous in scope and length; we do not have space to consider all aspects of it. Nor do we weigh in on how well the Truth and Reconciliation Commission executed its overall task, a subject of considerable academic and policy debate (Andrews 2004; Brooks 1999; Doxtader and Villa-Vicencio 2004; Naidu 2013; Daly 2003). We focus on two policy lessons, the first of which regards design. South African apartheid is a complex context for harm, which spanned harms of discrete, sometimes individual action as well as harms from pervasive economic, political, and social disenfranchisement and oppression. We take as a critical lesson for success that no harm context poses such a logistical burden that it cannot be redressed. The Committee on Rehabilitation and Reparations, as the name suggests, had aims beyond remuneration to victims and proposed a comprehensive suite of policy recommendations to transform both the victim and the perpetrator. South Africa did not fail to design reparations but they failed to adopt them

in full. That design may have flaws, but the committee was not stymied and unable to foster policy options. Policy is possible.

The second lesson concerns institutions and perpetrators. In most cases, the institution dictating the terms of the reparation that are ultimately executed upon is the institution of the perpetrator. That is in the nature of seeking redress from a guilty party. In South Africa's case, the apartheid government was dissolved and replaced by an elected government extremely sympathetic to the human rights abuses suffered under apartheid because the leaders themselves had directly suffered imprisonment and exile. But this sympathy and shared experience proved insufficient for action. The solution, not answered by this case study but posed by it, is finding the political and economic impetus for an institution to accept the change reparations require. That this failure to implement an encompassing reparations policy, even when it was clearly motivated and fully designed, occurred in South Africa under the post-apartheid government makes clear how important and challenging this is.

LESSONS FOR SUCCESSFUL REPARATIONS POLICY

Each of the case studies offer myriad lessons about reparations policy; our evaluation focused on the notion of success, a potentially elusive concept in any policy but particularly difficult in instances when severe harm has occurred. Our discussions aimed to link areas or patterns in satisfaction, dissatisfaction, and transformation in the wake of harm. We draw several lessons, organized through the stages of policy development.

First is motivation: redress and accountability are necessary for a reparation to be successful but cannot be achieved incidentally. To transform the victim and perpetrator in the wake of harm, the motivation of the policy must be clear. Both the emancipation of the serfs and the Indian Claims Commission facilitated payments to an injured party, but those payments were not motivated by a desire to claim culpability, and they affected little permanent change in the status of the victim or the attitude of the perpetrator. One interpretation of this is that a reparation must include an apology, either definitionally (as in, a payment without an apology is not a reparation) or in principle. But even official apologies, like President Clinton's after the Syphilis Study at Tuskegee, are insufficient to success if they are not part of a cohesive agenda of transformation.

Our conclusion is that a successful reparation must include an intention, well-stated and apparent, that the victim needs to and ought to be redressed and the perpetrator needs to and ought to be held accountable in some fashion. These are not symmetric, or equally important, but parallel aspects of the overall aim. Our assertion is that design and implementation cannot achieve this aim by accident but instead must be orchestrated around a guiding motivation. Redress and accountability are not the sole aims of a reparations policy, but they cannot be achieved without being aims of a policy. Further, without acknowledgment of harm, there is little hope of shifting the power and relational dynamics between perpetrator and victim that led to the harm in the first place, a reason why remuneration alone cannot repair harms.

Second is design: defining what constitutes a reparation is important but far less meaningful than how a reparation is conceptualized. The actual form of remuneration does not necessarily have an ordinal ranking of what is best, nor is remuneration the sole consideration. Indeed, although we see that payment is part of reparations policy, well designed it is not the whole of reparations policy. The cases we explore in this article that relied heavily on discrete remuneration as the premise of reparation—namely, the emancipation of the serfs, the ICC, and, in practice if not in design, South Africa—are arguably the least successful in generating meaningful redress for victims or holding perpetrators to account.

Instead, a victim-led approach in defining the harm, the victims, and the scope of the policy in response—inclusive of but not limited to remuneration—is key to reparations success. German reparations achieve this through working with a representative agent that is continually negotiating on behalf of the needs of victims. Japanese internment reparations, also

advocated for by self-identified victims of the harm, were instead a one-time, symbolic payment. Although the payment was far short of the wealth and income lost, it was driven by the JACL in pushing for congressional action. South African reparations included the testimony of thousands of individuals in consideration of its recommendations. This was a function of being part of a broader truth and reconciliation effort, but it still informed the policy design process.

Victim-led definition of scope can enable an inclusive approach to the preferences of those harmed, especially those reluctant or even hostile to the idea of remuneration. Not all victims want to receive money or personal attention for what happened, but may be more vested in legacy, in preventing another wrong, or in having their experience contribute to some change. The details of what that entails have to come from victims rather than the perpetrator. There are many flaws in the emancipation of the serfs and the Indian Claims Commission, but many of them can be traced back to the unidirectional flow of policy, where all terms, harms, and actions are dictated by perpetrators without any input from or even consideration of the victims.

A combination of the need for clear motivation and the role of victims in articulating the harm and solution is an argument for an investigative panel, commission, or committee that presents findings detailing the nature and extent of the harm and offers pathways for both victims and perpetrators. In the aftermath of the Syphilis Study at Tuskegee, the perpetrators were more transformed than the victims, in part because the ad hoc panel stood up to evaluate the study had a mandate to focus on the study and how it came to be, not the harms experienced or how to address them. Panels do not guarantee success, as South Africa's case makes clear, but they can facilitate policy development and direct action, even if they cannot assure that action will occur.

Third is implementation: most of case studies offered lessons of what to avoid, rather than hallmarks of success, in reparations policy. The emancipation of the serfs was implemented in a way to keep the newly freed serfs poor. The Indian Claims Commission favored small settlements, with a high burden of proof and a deference to put the awarded funds in trust rather than to victims. The victims of the Syphilis Study at Tuskegee had to sue for compensatory payment, and an apology came only twenty-five years later. Appetite waned, and what reparations were ultimately enacted in South Africa were a fraction of the scope the committee had envisioned.

However, our view is that the implementation mirrors the motivation; a reparations policy committed to transformation can have a difficult implementation, but it is not an insuperable barrier. Implementation bends to the will of motivation, not the other way around.

One positive lesson for reparations, though, is that they can benefit from a living policy of revisited assessment of needs, aims, and execution. This can reflect that needs and aims shift. German reparations have evolved from their initial support for the Israeli state to the recent investments in Holocaust education. Were there a reparation for the Syphilis Study at Tuskegee, a successful policy would span the initial and immediate need for medical care to the ongoing desire for memorialization and education from families. Or a recurring commission for Japanese reparations may have enacted policy around the increase in hostility and hate crimes toward Asian Americans, as JACL documents (Japanese American Citizens League 2022a).

A recurring, transparent process of assessment may also help avoid or reduce the possibility of a frequent source of implementation failure: dispute in the allocation of funds. Accusations were brought against the trusts that held awards from the Indian Claims Commission, and criminal charges and convictions in the Claims Commission of German reparations. As recently as 2017, families of the Syphilis Study at Tuskegee were seeking to use unclaimed funds from their 1975 settlement to fund a museum only to be countered by the claim that such use would violate the original terms of the settlement (Associated Press 2017a, 2017b). Any large payment process or large source of funds can be the target of those with malicious intent, and any benefit can have challenges in receipt. Given that reparations of-

ten include both, accountability at the outset is warranted.

A central challenge to implementation, and successful implementation in particular, is that the perpetrator of the harm, the primary dictator of terms, and the administrative institution are typically one and the same. The transformation from guilty to accountable may be a policy aim, but not a sufficiently compelling one, particularly for those with a vested interest in maintaining their power. In the case of Japanese reparations, the commission articulated the benefit of preservation of principles, which expanded the notion of success. The Indian Claims Commission was adopted in part to streamline the numerous claims filed in separate courts. The emancipation of the serfs was intended to invigorate the flagging Russian economy. A selfish reward for the perpetrator is often a component of implementation.

Last is impact: a key barometer of success is legacy. For victims, this includes promotion and awareness of what occurred. For perpetrators, this entails actions to ensure that the harm does not happen again. Legacy is central to the families of the Syphilis Study at Tuskegee in their advocacy for financial support for education and memorialization of the victims. Despite the enormous change in federal practices and standards around research since 1972, many consider the study's largest legacy to be that of distrust. Legacy was also a key motivator in the divided Japanese American community in the push for reparations for internment, to bring attention to a clear violation of the Constitution, or as the Commission noted, to make clear that "it can happen here" (Commission on Wartime Relocation of Internment and Civilians 1983). And though the Committee on Rehabilitation and Reparations did not see its policy vision fully realized in South Africa, some argued that the testimony of thousands of victims was integral to moving past apartheid (Naidu-Silverman 2019).

Hence, we conclude that a successful reparation is one that alters the legacy of the harm; beyond transforming the parties involved, it catalyzes that transformation into awareness, learning, and understanding that arguably could not be achieved without it. Harm is not random and neither are victims. The legacy of policies is the change to the attitude or power imbalance or situation that enabled the harm to occur in the first place.

IMPLICATIONS FOR REPARATIONS TO BLACK AMERICANS

Although it is beyond our scope to enumerate the ways in which Black Americans have been victims to state, economic, and social violence during and in the aftermath of slavery that motivate a reparations policy, others have taken up and continue to take up that mantle effectively (Bittker 1973; Darity and Mullen 2020). We apply the lessons from our case study analysis to reparations to Black Americans, acknowledging here that the harm redressed could be specific actions, sets of policies, or entire systems of oppression. Yet we can offer broad considerations.

First, reparations to Black Americans ought to have clear articulation of the harm to be redressed and held accountable for. The complexity and diffusion of harm perpetrated against the Black community for centuries serves as a motivator for reparations, but reparations policies benefit from defined aims. Defined does not mean limited or reduced but expressed in a way that both parties are in understanding of what needs to be achieved.

Related to discernible aims, reparations ought to have clearly articulated benchmarks for both successful redress and sufficient accountability. These benchmarks could be economic, social, political, cultural, educational, or anything of relevance to the aims. Policy should then be designed with those specific benchmarks and broader aims defined. In addition, that design and development is best when victims' desires and preferences are central, including those victims who oppose remuneration or apology. A big tent ensures that reparations are responsive to community preferences and has broad support in its agenda. A central planning committee with recurring convenings to cull those victim preferences, design the policy, and monitor implementation can help ensure accountability and respond to shifts in need.

The biggest obstacle perhaps facing reparations for Black Americans is in compelling implementation—identifying the selfish payoff to

the federal government in enacting such a policy beyond its accountability. Yet there are lessons to be drawn from motivations past, such as the reestablishment of democratic principle, and present, like institutional distrust, to drive policy creation. Design, though difficult, is not impossible and implementation, though challenging, is not an insuperable barrier.

It is our view that paramount to reparations to Black Americans is the mutually agreed upon aim of what the legacy of reparations ought to be. One way to think about this is to consider what cannot change in America without reparations to Black Americans, or alternatively, to consider what is most in need of changing that reparations to Black Americans can address. Like reparations, legacy is more than payment.

These lessons drawn from our case study analysis are not meant to be interpreted as a proposal for reparations to Black Americans. Nor are they meant to be seen as support for, or criticism of, any existing policy proposals for reparations to Black Americans. Case studies offer a way of interpreting policy experience through a framework for assessment, in this instance, success.

We noted earlier that reparations to Black Americans are subject to the effectiveness paradox: the economic, political, or social gap between Black and White Americans motivates reparations, but the gap is so large that reparations could not be effective, and therefore they should not be pursued. Our review of case studies makes apparent that this argument imposes a notion of effectiveness that would be moot in a comprehensively designed policy. Efficacy and success are defined by the victims: their motivations in seeking redress, their preferences in what policy should include, and their hopes for legacy. In this light, an implication for reparations to Black Americans is how feasible they are.

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II

Accounting for Atrocities

Stolen Lives: Redress for Slavery's and Jim Crow's Ongoing Theft of Lifespan

ELIZABETH WRIGLEY-FIELD

Reparations proposals typically target wealth. Yet slavery's and Jim Crow's long echoes also steal time, such as by producing shorter Black lifespans even today. I argue that lost time should be considered an independent target for redress; identify challenges to doing so; and provide examples of what reparations redressing lost lifespan could look like. To identify quantitative targets for redress, I analyze area-level relationships between Black lifespans and six measures of intensity of slavery, Jim Crow, and racial terror. Results reveal inconsistent relationships across measures, suggesting difficulties in grounding a target for redress in such variation. Instead, I propose that policies aim to redress the national lifespan gap between White and Black Americans. The article concludes with a typology of potential strategies for such redress.

Keywords: lifespan disparities, time, freedom, health, wealth

Among the stories of violence Margaret Burnham recounts in *By Hands Now Known: Jim Crow's Legal Executioners* is a series of incidents in Alabama's Union Springs in 1945 (Burnham 2022, 136–39). A stretch of Black businesses included a shop and cafe owned by Edgar Bernard Thomas and, next door, a barbershop owned by Reverend James L. Pinckney. On October 13, Thomas's business was visited by two police officers. One was Dewey Columbus Bradley, who had already threatened Thomas (perhaps over interest in a woman with whom Thomas was romantically linked). The other was the assistant police chief, Hollis Eugene

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Whittle, who came armed with a sawed-off shotgun. In front of witnesses, Officer Bradley shot Thomas in the face and shot him several more times as he fled, killing the sixty-three-year-old. From his adjacent business, Reverend Pinckney heard Bradley tell Thomas, "We're going to run this damn town. I'll kill every black son of a bitch in the street." Later that day, Pinckney was warned by the chief of police that he must leave town to avoid Thomas's fate. He listened, fleeing to the woods (and ultimately to Chicago) and leaving his wife and his business behind.

The tragedies and injustices enacted on Thomas and Pinckney on this one day in October 1945 illustrate a core aspect of Jim Crow: the intertwining of theft and violence. Pinckney lost his business and his home; Thomas lost his life. Among the consequences of the widespread racial terror recounted in Burnham's extensively documented history are an immense loss of wealth among Black Americans who had sought to amass security through businesses and property, and the losses of life that facilitated many of those thefts. Some victims of racist murder, faced with untenable choices, chose dignity and defiance over life; or at least, over preserving their lives at any cost. Others were murdered with no such choice. As Burnham puts it when summarizing the context of resistance to Jim Crow elsewhere during the same period, "In Birmingham in the 1940s, a Black person—any Black person—could have been killed by a white person—any white person. And thus every Black person had to make peace with the burden and duty of resistance, reckon with premature death, determine their personal point of no return, and countenance the politics of Black revolt, whether or not they wanted to" (Burnham 2022, 190–91). The threat of lost life was foundational to Jim Crow's terror and to its terrible edifice.

These linked thefts—of wealth and of life—are twin faces of racial domination in the United States. They were the foundations of enslavement, which built extraordinary wealth through stolen labor power: life's work (Marx [1867] 1981, 914–26). As the historian James Oakes (2015) puts it:

> When abolitionists denounced slavery as "theft," they had two different kinds of robbery in mind. One was the day-by-day, year-by-year, theft of the fruits of the slave's labor. But they were also thinking of a different, more fundamental kind of theft. Human beings own themselves, as a natural right, a right of property, abolitionists argued. So when masters claimed slaves as their own they were effectively robbing the slaves of their property in themselves.

Oakes develops the concept of *property in themselves* to make a specific point about the complex relationship between chattel slavery and capitalism. But his distinction is also useful from a broader perspective: slavery entailed not only the theft of the fruits of the labor of enslaved people, but also the theft of their self-determination. The starting point of this article is this reminder to think broadly about self-determination as the most fundamental theft enabled and enacted by America's systems of racial domination.[1]

Scholars and activists have articulated proposals for reparations to address this history, with increasing specificity and, over the past decade, receiving increasing attention. These proposals vary in their details, whether payments to individual African descendants of slaves (Darity and Mullen 2020), community land trusts (Franke 2019), or other mechanisms. Yet nearly all share one target for redress: stolen wealth. Whether focused on the present-day value of specific thefts and injustices associated with chattel slavery—estimated at some trillions of dollars even without accounting for Jim Crow apartheid (America 1990; Craemer 2015; Darity and Frank 2003)—or remediating the Black-White wealth gap broadly (Darity, Mullen, and Slaughter 2022), these proposals identify wealth as the appropriate mech-

1. In that sense, it is a complement to prior analyses such as Daina Ramey Berry's (2017) assessment of the economic value of enslaved peoples and how those values may have intersected and contrasted with their internal value of themselves, "soul values" (61–66), and one another.

anism for redress even when the goal is to improve health (Williams and Collins 2004; Outterson 2005; 2008; Bassett and Galea 2020; Taifa 2020; Richardson et al. 2021; Lawrenz 2022; Thakur and Martinez 2023).[2] If stolen wealth and stolen time are the two sides of America's system of racial domination, discussions of reparations for that system have, by and large, focused squarely on one side alone.

On one level, this focus makes sense. Wealth is, perhaps, the ultimate proxy for power; and research suggests that Black families' economic circumstances today are still powerfully shaped by their own families' direct exposure to enslavement and Jim Crow (Althoff and Reichardt, n.d.),[3] as well as being powerfully shaped by the larger economic context that those institutions created. Yet it is not obvious that attempts to redress stolen wealth can adequately redress the other face of racial domination: stolen time. The loss of lifespan associated with being Black in the United States is shocking in its magnitude. Black mortality in the United States every single year has been higher even than White mortality was during the first year of the COVID-19 pandemic (Wrigley-Field 2020).[4] Even before the pandemic, about sixty-eight thousand more Black Americans died each year than would if the Black population had the White population's death rates (author's calculation). As the literary historian Saidiya Hartman puts it, "Racism is a distribution of death, controlled depletion, and a brutal allocation of chances at life" (Rodriques 2022).

If wealth is the best proxy for power, then, I claim, time may be the best proxy for freedom. This claim builds on a long theoretical tradition (Goodin 2008; Konzcal 2021; Cohen, n.d.; 2018; Rose 2016, 66–91; Marx [1867] 1981, 340–416; Downs 2012, 16) and also a practical one, in the sense that—according to the analysis of historian Jim Downs—"health formed a central part of freedpeople's campaign for rights" (Downs 2012, 166).[5] Understanding stolen time through this lens returns the theft of time from a solely economistic understanding (time spent producing wealth) to a human footing (time as the fundamental resource through which we pursue our own most important goals). Lost lifespan may be a somewhat reductive proxy for a broader construct: how lives, or whose lives, are valued. Yet as the starkest possible determinant of how much time each of us gets, it is also an intrinsically meaningful outcome.

Because wealth is produced by human beings' effortful time, there is no sharp distinction between slavery as stolen wealth and slavery as stolen time. This insight is particularly clear in work by Thomas Craemer (2015), which estimates the wealth stolen through slavery as the wages that were denied to enslaved people for their long hours and years of work, yielding estimates of about $6 to $14 trillion in total, depending on whether the stolen time in question is the time spent working or the time spent

2. A few proposals, however, advocate for a broader set of health-promoting policies to address the legacies of slavery and Jim Crow (Gaskin, Headen, and White-Means 2004) and racist policies generally (Russell 2022; McLemore 2022), and for reparative policies to address the role of medical institutions in racist practice (Soled et al. 2021). Another tradition, not focused on health or lifespans, articulates reparations explicitly as more expansive than wealth transfers alone (Kelley 2022, 114; Táíwò 2022).

3. Lukas Althoff and Hugo Reichardt (n.d.) find that the contemporary economic gap between Black families whose ancestors were enslaved in 1860 and lived under Jim Crow regimes afterward and Black families who were free in 1860 and lived in non-Jim Crow states afterward is nearly half the size of the corresponding Black-White gap.

4. Age-adjusted White mortality was higher (worse) than Black pre-pandemic mortality in 2021, but not in 2020 or 2022. White life expectancy in each year of the COVID-19 pandemic was higher (better) than Black life expectancy has ever been (Wrigley-Field, n.d.).

5. Downs argues that "Freedpeople's political mobilization for better health outcomes led local, state, and, most of all, the federal government to consider the health of the emancipated population as part of their responsibility to rebuild the South. . . . The Medical Division illustrates that freed slaves were the first advocates of federal health care" (Downs 2012, 167).

under the control of the enslaver, that is, all time. This calculation hinges on enslaved people's time as the *proximate* object of theft and translates that time into wealth as the ultimate metric for redress.[6] Here, however, I explore treating time as the *ultimate* object of theft and ask, among other questions, whether wealth transfers must—and can—serve as a proximate means of addressing this theft. That is, I explore the idea that articulating stolen time itself, as distinct from stolen wealth, as a target for redress might also suggest additional avenues for repair that need not—and perhaps cannot—be fulfilled via wealth transfers.

Can lifespans cut short due to racial subjugation truly be redressed? Certainly, no form of redress is possible to those whose life has already been taken—a point I return to at the end of this article. But two other potential targets for redress remain: redress to those who have lost time with kin due to (relatively recent) violent racial subjugation, and redress for ongoing disparities in length of life that are associated with slavery and Jim Crow. For kin (formal or chosen), the particular psychosocial harms that follow from a loved one's life being unjustly cut short could be compounded by the inability to publicly mourn—a form of "disenfranchised grief" (Doka 1999). The stories collected by Burnham (2022) reflect, over and over again, that mourning the victims of Jim Crow violence risked further violence.[7] However, I focus here on redress for ongoing inequities in lifespan linked to America's history of enslavement and Jim Crow.

In what follows, I consider two questions. First, can the contemporary loss of lifetime associated with slavery and Jim Crow be quantified? Second, what avenues are there to redress stolen time? In the vein of the second question, I ask: to what extent can wealth-based reparations provide redress for these losses, and what else might provide redress? In general, this article advances an argument that reparations can better address the scale of harm committed by American slavery and Jim Crow if they incorporate lifespan, while providing a framework for understanding key difficulties and choices in doing so in practice.

CAN THE TWENTY-FIRST-CENTURY LIFESPAN COST OF SLAVERY AND JIM CROW BE QUANTIFIED?

If one wants to identify quantitative targets for redress, there are two natural of proceeding. One is to use the full White-Black lifespan disparity as a target; the other is to compare states with different intensity of histories of enslavement, Jim Crow, and racial terror. Here I ask whether this second, more specific strategy can outperform the first, blunter approach in giving a meaningful quantitative target for redress.

Specifically, I explore how state-level variation in Black lifespans and in the White-Black lifespan gap is associated with states' enslavement and Jim Crow histories and analyze what the results imply about the ability to identify meaningful measures for quantifying the cost of those institutions in lifespans today. I also analyze those histories' relationship with White lifespans, insofar as this helps to understand how those histories structure within-state White-Black lifespan gaps. Many measures of enslavement, Jim Crow, and racial terror are possible. Here I show that these measures do not agree, even qualitatively, on which states had the greatest intensity of these atroc-

6. Many alternative procedures for translating lifespan into wealth are also possible. For example, such translations are built into cost-benefit analyses, including the "value of a statistical life" (Viscusi and Aldy 2003), which in the United States is presently estimated at around $10 million but varies with age, peaking in the forties and broadly following the age pattern of consumption (Kniesner and Viscusi 2019, 11–12). Similar translations are implicated in many other routine contexts, such as in the monetary penalties enacted by juries in civil court judgments related to wrongful deaths and in individuals' decisions about life insurance (Friedman 2021). Such estimations can support an alternative set of metrics for developing wealth-based reparations (see Darity et al. 2024, this issue).

7. The profound symbolic importance of honoring the lives of those that have died—and of being unable to do so under threat of violence—also led Black funeral directors to play a distinctive and important role in the struggle for Black civil rights (Smith 2010; Parker 2023).

ities, nor on the relationship of that intensity to Black lifespan and White-Black lifespan disparities. These results imply that this natural method for identifying targets for redress may not work, at least, not without a strong basis for preferring a particular metric to others.

To contextualize the results to follow about state-level lifespan variation among the former slaveholding states, I provide some brief descriptive facts about those states as a whole (illustrated in the online appendix).[8] Black and White lifespans are each lower in the states that had enslaved populations in 1860 than in other states, by, at the median, about two years for White lifespans and nearly three years for Black. In addition, Black lifespans are substantially lower than White lifespans in each group by, at the median, more than three years in the 1860 slaveholding states and nearly three years in the other states. These comparisons fail to capture the fact that the Black population disproportionately lives in the former enslaving states, which is why the total lifespan disparity in the United States is larger than the disparity in each of these regions: life expectancy in 2019 (before the COVID-19 pandemic) was 74.8 for non-Hispanic Black, and 78.8 for non-Hispanic White, populations.

In what follows, I analyze whether these lifespan outcomes also vary within the former enslaving states in association with a variety of measures of the intensity of slavery and Jim Crow practices in each state, in order to see whether there is a consistent relationship across measures. I do not use control variables because the point is to capture relationships between American racial domination and lifespan that flow through multifaceted pathways that would implicate almost any realistic confounder as also being an intermediary variable, and because the chance of a well-identified causal effect is slim in any case. Instead of attempting to causally isolate slavery and Jim Crow regimes as a cause net of some other variables (that they also no doubt contributed to causing), then, I explore whether their overall association with lifespans can help us conceptualize racial disparities in lifespan as a target for redress, much as total racial disparities in wealth have been identified as one plausible target (Darity, Mullen, and Slaughter 2022).

Quantifying State-Level Variation: Data

The primary lifespan data are measures of state-specific period life expectancy for non-Hispanic Black and White Americans, calculated as part of the County Health Rankings and Roadmaps (CHRR) dataset (University of Wisconsin Population Health Institute, n.d.), based on restricted-access lifespan data from the National Vital Statistics System.[9] Because the long-term consequences for mortality of the COVID-19 pandemic are still unknown, this article uses pre-pandemic lifespans by using the 2021 CHRR release, which draws data from 2017 to 2019. Life expectancy measures in this dataset therefore represent the average lifespan of a hypothetical birth cohort whose mortality conditions, over their entire lives, were those of the same-race 2017–2019 population in their state. I treat Washington, D.C., as a state.

I use state-level lifespans, rather than more disaggregated geographies such as counties, for two reasons: first, because it is not clear that counties have any analog of state governments' "critical role in defining racial categories and policing their boundaries" (Bruch, Rosenthal, and Soss 2019, 164); second, because some county-level estimates from the CHRR seem clearly implausible (for example, life expectancy above one hundred for both White and Black populations) and likely reflect life expectancy's sensitivity to small-area variation. However, in an additional analysis reported in the appendix, I use county-level lifespans from a

8. The numbers reported here consider states with 1860 enslaved populations versus all other states, including those that were not states in 1860. Readers who are rightly skeptical of some exceptionally high estimated life expectancies for Black populations in states where they are very small—Vermont and North Dakota—can take comfort that these values have little influence on the median values reported here. For the appendix, see https://www.rsfjournal.org/content/10/2/88/tab-supplemental.

9. Restricted-access data are needed to calculate race-specific life expectancy measures even for geographic units as large as states because death counts at childhood ages are often suppressed in public data.

different source, the Institute for Health Metrics and Evaluation (Dwyer-Lindgren et al. 2022), which raise some different methodological challenges.

I analyze two outcomes that each imply different benchmarks for conceptualizing the lifespan loss associated with states' participation in slavery and Jim Crow. First, I analyze state-level variation in Black life expectancy. This outcome implicitly uses Black life expectancy in other states as a benchmark (or baseline). Second, I analyze state-level variation in the White-Black life expectancy gap. This outcome uses White people in the same state as a benchmark.

As independent variables, I use four distinct measurements of the intensity of slavery and Jim Crow at the state level. First, I examine the proportion of the state population that was enslaved in 1860. This measure was previously found to be associated, at the county level, with lower Black, and higher White, life expectancy, net of various control variables (Reece 2022). Second, I examine counts of Jim Crow laws passed by each state before 1950. These laws, some seven hundred in total, were originally collected by Pauli Murray ([1950] 2016) and were digitized and extended by Althoff and Reichardt (n.d.). Third, I examine the quality of segregated Black schools. The school quality measure was also constructed by Althoff and Reichardt, who find large long-term economic consequences of both Jim Crow laws and Jim Crow school quality, using data on teacher salaries, student-to-teacher ratios, and term lengths in Black segregated schools during the Jim Crow era, all previously collected by David Card and Alan Krueger (1992). I reverse-code this measure to indicate inadequate quality, so that, like the other measures, it reflects the intensity of racial oppression.

Fourth, I examine the historic racial regimes index (HRR) developed by Regina Baker (2022), a composite index of measures of slavery, sharecropping, disfranchisement, and segregation—measures collectively spanning the antebellum period, Reconstruction, and Jim Crow. Baker uses this scale to assess the legacies of racial regimes for poverty across southern states, finding that a stronger historic racial regime is associated with worse Black poverty and, especially, Black-White economic inequalities.[10]

Finally, in the appendix, I additionally explore two additional measures designed to capture the intensity of racial terror at the state and county levels, respectively. These are, first, counts of Jim Crow violent incidents, collected by the Burnham-Nobles Digital Archive (Civil Rights & Restorative Justice Project, n.d.); and second, counts of lynchings of Black Americans between 1883 and 1941, collected by Charles Seguin and David Rigby (2019).[11] Both measures were collected from historical newspaper accounts, a source that raises distinctive measurement concerns, as described in the appendix, though these concerns are likely to be substantially greater for the broader measure of violence than for lynchings. Extrajudicial violence also bears a complex relationship with racial domination, in that it may occur most readily when other, more formalized and routinized means of domination are not in operation or not reliable (Troesken and Walsh 2019).[12] Yet, despite these weaknesses and calls to more comprehensively measure racial violence, much evidence based on these and other data sources show long-term consequences of

10. Unlike the other measures, which are defined to include all states in 1860 or all states that employed Jim Crow policies, the HRR is defined only for states in the South as defined by the U.S. Census—which notably excludes Missouri, a slaveholding state in 1860 in which Black lifespans are notably low today—and further excludes Oklahoma (not yet incorporated in 1860) and Washington, D.C. An alternative version of the HRR, also developed by Baker (2022), produces essentially identical results in the present study and is not reported.

11. Historical lynchings, as measured in a different database from the one used in the appendix analyses, were previously found to be associated with county-level life expectancy (Kihlström and Kirby 2021) and with mortality rates for groups except Black men (Probst, Glover, and Kirksey 2019).

12. Lynch mob violence was also sometimes averted through "extraordinary interventions" in contexts where demands of the political economy made such violence undesirable to, for example, manufacturing interests (Beck, Tolnay, and Bailey 2016).

racial terror (Cunningham, Lee, and Ward 2021).

Each of these measures is defined for a distinct set of states, but their bivariate correlations, in the states where each respective pair exists, vary widely. Unsurprisingly given that it is constructed from other measures or analogs of them, the HRR is tightly correlated with most of the other measures: its correlation with (reverse-coded) Black school quality is 0.94, with the proportion enslaved in 1860 (which is one of its four components) is 0.89, and with the count of Jim Crow laws (a much simplified version of which is one of the HRR's components) is 0.71.

Quantifying State-Level Variation: Results

Results of these analyses are summarized in table 1, which presents, for each measure, the difference between each outcome at the 75th and the 25th percentile values of that measure (with singular outliers omitted, as noted). Detailed, graphical results and summaries are presented in the appendix. State-level measures that include Washington, D.C.—the proportion enslaved in 1860, the count of Jim Crow laws, and the quality of Jim Crow schools—are reported with and without that observation because it is an extreme outlier of White life expectancy among Jim Crow states, with the highest state-level White life expectancy in the entire United States. Washington, D.C., has the fourth-lowest Black life expectancy in the United States, which does not make it an outlier among Jim Crow states. Additionally, the count of Jim Crow laws is also reported without Louisiana, which passed ninety-eight such laws, nearly 50 percent more than the next-highest state, Virginia, which passed sixty-six, an intensity of legal disfranchisement that was extraordinarily effective and damaging (Keele, Cubbison, and White 2021). These two outliers substantially affect the bivariate relationships summarized in table 1 when they are included.

Across measures, the relationship of the intensity of slavery or Jim Crow—when comparing states that had slavery in 1860 or Jim Crow laws—to Black life expectancy and to the White-Black life expectancy gap is somewhat inconsistent. For Black life expectancy, the proportion enslaved in 1860, poor-quality Jim Crow schools, and the HRR index all have a negative relationship, and the count of Jim Crow laws has a positive relationship. For the White-Black life expectancy gap, the proportion enslaved in 1860 and the count of Jim Crow laws have an unexpected negative relationship (as do both measures of violence analyzed in the appendix); the extent of poor-quality Jim Crow schools has almost no relationship; and only the HRR index has the expected positive relationship, which is driven primarily by that index's positive association with White life expectancy. In general, the geographic variation in the White-Black life expectancy gap analyzed here is more heavily driven by variation in White life expectancy than by variation in Black life expectancy.

The inconsistency of these results is perhaps surprising in light of research finding county-level negative associations (net of controls) between Black life expectancy and the proportion of the population enslaved in 1860 (Reece 2022).[13] More broadly, the research on the "long arm of slavery" finds enduring spatial and place-based differences, based on county-level and state-level histories of enslavement, in Black levels of, and Black-White disparities in, outcomes such as poverty (O'Connell 2012; Baker 2022), educational attainment (Bertocchi and Dimico 2012), arrest rates (Ward 2022), and harsh prison sentences (Gottlieb and Flynn 2021). County-level lynching histories predict contemporary use of corporal punishment in public schools, particularly for Black students (Ward 2022). States' and counties' enslavement histories predict their consequential cultural and institutional features like the political attitudes of their White residents (Acharya, Blackwell, and Sen 2016), their contemporary political suppression of Black votes and the paucity of their welfare state provisions (Williams, Logan, and Hardy 2021), and the late-twentieth-century growth of their incarceration apparatuses (Duxbury 2023), though this latter association partly reflects a complex history in

13. Other research identifies life expectancy costs associated with other forms of historical institutionalized racism, such as redlining (Graetz and Esposito 2023).

Table 1. Difference Between Bivariate Fitted-Value Lifespan Outcome at Racial Subjugation Measure's 75th vs. 25th Percentile Values

	Black Life Expectancy	White Life Expectancy	Gap
1860 percent enslaved	0.10	*–1.85*	*–1.95*
1860 percent enslaved, Washington, D.C., excluded	–0.19	–0.36	–0.17
Jim Crow Laws passed before 1950	0.20	*–0.89*	*–1.09*
Jim Crow Laws, Washington, D.C., and Louisiana excluded	0.32	0.26	-0.07
Jim Crow school quality (reverse coded)	0.05	*–2.07*	*–2.11*
Jim Crow school quality (reverse coded), Washington, D.C., omitted	–0.30	–0.37	–0.07
Historical Racial Regimes index score	–0.18	0.25	0.43

Source: Author's tabulation.

Note: Lifespans are life expectancies at the state level from 2017 to 2019 or, for lynchings with Black victims, smoothed life expectancies at the county level from 2015 to 2019. The analysis of percent enslaved is limited to states where it exceeds 1 percent. Italicized values are from regressions that are not preferred because they are heavily driven by very high White life expectancy in Washington, D.C. Table A.1 expands this table with results for two additional measures.

which other forms of labor control predominated in the South in the early twentieth century (Muller 2021). This large research program pinpointing slavery's long-term space- and place-based legacies (reviewed in Cunningham, Lee, and Ward 2021) is not without nuance and qualification, such as explorations of how demographic change enables and constrains the persistence of these relationships (O'Connell, Curtis, and DeWaard 2020) and analyses of mid-century racial terror as an intermediary mechanism between slavery and contemporary homicide that varied in intensity (Petersen and Ward 2015). Yet despite its growing complexity, this research program's overall message is clear: slavery reverberates. Its echoes are so vast and all-encompassing that they are best approached on the terrain of ever-shifting metaphor: slavery has afterlives (Hartman 2008, 6); it leaves a wake (Sharpe 2016). From this perspective, the somewhat mixed results found here are unexpected.

However, other research seems to be broadly more consistent with what is found here. One study finds that the direct economic consequences of enslavement had dissipated by 1940, whereas the consequences of Jim Crow—and thus also the indirect consequences of enslavement, by putting formerly enslaved families in what would become Jim Crow states—continue to this day (Althoff and Reichardt, n.d.). Another study suggests that the consequences of eradicating Jim Crow legal regimes for the survival of Black babies—a particularly consequential determinant of life expectancy—were immediate (Krieger et al. 2013).

To the extent that the results found here vary across measures, they raise a question about the extent to which parts of the legacy of slavery research program, in which studies typically rely on a single measure, may have a "file-drawer problem" (Rosenthal 1979). From the perspective of reparations programs, one implication of the results found here is that efforts to use such cross-state comparisons to calibrate metrics of lost lifespan probably need to commit to a measure on theoretical grounds, which may be difficult to justify.

Interpreting Geographic Variation in Lifespans

The premise of relating Black lifespans to state-level Jim Crow, slavery, and racial terror is that the variation across states in the intensity of

these regimes captures the way that those regimes structure contemporary lifespans. That premise may not be true. Indeed, both baselines that are implicated in these analyses—Black lifespans in other states and White lifespans in the same state—are problematic from the perspective of identifying how racial regimes and histories of enslavement and Jim Crow structure Black lifespans today. The problems with the northern baseline are discussed in the remainder of this section; the problems with the White baseline are elaborated elsewhere (Wrigley-Field, n.d.) but amount to the fact that White mortality is hardly unaffected by racism and the legacies of slavery (Metzl 2019; Malat, Mayorga-Gallo, and Williams 2018; McGhee 2022).[14]

The act of comparing Black lifespans across states based on states' intensity of slavery and Jim Crow implicitly imagines that other states were fully outside that system. This is not true. To deny it is not to deny the uniqueness of the Jim Crow regime or to imply that living under that regime was no different from living in the North; Jim Crow was unique in its harms. Yet there is something odd about the premise that, on the one hand, slavery in the South still affects southern states today, but on the other hand, the fact that the entire country was founded on slavery no longer deeply affects the North. Indeed, Black Americans' advances in freedom—whether emancipation (Downs 2012) or northward migration (Black et al. 2015)—often came at the cost of shortened lives, in the respective contexts of abandoned Reconstruction and the brutal segregation of northern cities (Leibbrand et al. 2020), among other racist policy responses in northern migration destinations (Derenoncourt 2022)—despite substantial Black organizing for health (Long 2016; Nelson 2011). It seems perverse, then, to use the very places where lifespans were shorter, where Black migrants bought freedom (from Jim Crow) with freedom (their lives), as a neutral measure of lifespan free of Jim Crow's echoes today.

This problem highlights a distinctive challenge of conceptualizing redress for lost lifespan: the lack of a natural metric, which creates the need for a baseline against which to compare even if no good baseline exists. Attempts at enumerating the scale of slavery's theft of wealth are plagued with challenges, but they are conceptually clearer. One approach that some authors have taken is to focus on a single pivotal moment and ask, how much wealth was stolen just through this one injustice alone? (Logan and Darity 2020) This strategy does not presume that no other atrocities matter or deserve redress; it simply makes the problem of beginning an accounting more tractable. It would be useful if comparing Black lifespans in northern and southern states provided a similarly revealing, if imperfect, starting point. But the studies of wealth stolen in (in that example) one race riot in Arkansas do not assume that the wealth distribution is otherwise unproblematic, whereas using Black lifespans in northern states—or in southern states that enslaved fewer people or passed fewer Jim Crow laws—as a baseline builds in the assumption that those lifespans were not limited by slavery and Jim Crow.

The analysis here explored a variety of measures of the intensity of slavery and Jim Crow to see whether they might offer clear targets for quantifying the degree of lost lifespan that should be redressed. In the end, the variable results across measures and the fact that these racial regimes, in addition to being particular to the South, were also integral to the United States as a whole, suggest that—though perhaps all American lifespans are shaped by slavery in some way—the most meaningful target may simply be the overall White-Black lifespan gap in the full United States.[15] Before the COVID-19 pandemic, that gap was four years of life expectancy; during 2020 and 2021, it was

14. However, in contrast to the work just cited, see research by Ryan Gabriel and colleagues (2021) finding a protective effect of racism and histories of White racist violence on contemporary White opioid mortality.

15. As in the wealth gap, too, an alternative strategy, though daunting in practice, would be to attempt to comprehensively tabulate lifespan consequences of systemic racism, including persistent discrimination in housing, racial violence, and segregated public accommodations and public education—all common throughout the United States in the mid-twentieth century, not only in the South.

nearly six years (Arias et al. 2022). In the remainder of this article, I consider what it could look like to take, as a target of redress, giving Black and White Americans equal access to time.

WHAT AVENUES COULD REDRESS STOLEN TIME SPECIFICALLY?

If lifespan is the target of redress, what is the mechanism?

Can Wealth-Based Reparations Amount to Health-Based Reparations?

In particular, can the mechanism be wealth-based reparations? We know two things clearly: one major pathway that produces ill health and shortened lifespans for Black people in the United States runs through inadequate income and wealth; and income and wealth are not the only source of the health and lifespan inequities that Black populations face.

That much lifespan inequity runs through wealth is clear; research has found that wealth, income, and other economic resources account for substantial portions of racial inequity in survival (Sudano and Baker 2006) and health (Hayward et al. 2000), though others find that such economic variables account for little racial disparity in certain important health outcomes, such as cardiovascular conditions (Teitler et al. 2021). Three studies stand out for results that suggest that wealth differences may drive nearly all of White-Black mortality disparities. The first (Geruso 2012) finds that the vast majority of the White-Black life expectancy gap, excluding infant mortality, can be accounted for statistically by economic and demographic variables, although the underlying samples are small relative to the task of estimating mortality in small age groups. The second (Himmelstein et al. 2022) finds that wealth differences can statistically account for mortality disparities above age fifty. The third (Do, Frank, and Finch 2012) finds that self-rated health can be fully accounted for by socioeconomic status when the latter is comprehensively accounted for. Other research, however, suggests that study designs that do not account for the race-specific consequences of socioeconomic position (and stressors) can overestimate those conditions' contributions to racial health gaps, and that such contributions are substantial but far from total (Brown et al. 2023).

The findings of that third study, among others, may also suggest that wealth-based reparations might improve health in ways that research employing standard economic measures fails to capture. Limitations of conventional measures are (among others) that they measure the economic resources of individuals but not their community contexts (Do, Frank, and Finch 2012) and that they typically reflect a single moment in time (Boen 2016). In contrast, class evolves over the life course (Phillips, Martin, and Belmi 2020) and Black and White individuals with the same point-in-time economic status have likely held it for different lengths of time (Do, Frank, and Finch 2012; Boen 2016) and different numbers of generations (Sharkey 2008). An adequate wealth-based reparations program would provide flexible protection at all stages of life: a cushion against poverty, a way of limiting deleterious exposures, and the possibility of making investments across all of life, all benefiting recipients' descendants as well as themselves.[16]

Finally, some research finds that racial disparities in death during key midlife ages—the ages when most of the population-level lost lifespan is concentrated (Bor et al. 2022)—occur exclusively among those with relatively low levels of flourishing (Louie et al. 2021), a psychosocial construct capturing holistic well-being (VanderWeele, McNeely, and Koh 2019; Levin 2021), and it is plausible that large-scale wealth redistribution would sharply curtail the prevalence of low flourishing, such as by limiting poverty (Desmond 2023; Linares, Kandasamy, and Vladutiu 2022) and enabling education (VanderWeele 2017). Thus, across many

16. An additional challenge in generalizing from relationships between socioeconomic statuses and health outcomes in the current context to counterfactual contexts is that causes of death are also differentially susceptible to deleterious exposures at different life stages (see, for example, Leon and Walt 2000, 88–124) and large-scale changes in socioeconomic positions would presumably cause complex changes in the population distribution of health conditions and causes of death, with many additional consequences and feedback effects.

distinct lines of research, the idea that wealth engenders health seems nearly undeniable, and research offers substantial direct and indirect evidence that a radical redistribution of wealth toward Black Americans would provide similarly radical improvements in Black health.

Yet much research also finds substantial health and longevity gaps between Black and White Americans net of their economic position; indeed, some studies find that these gaps are largest among the wealthy (Colen 2011) and the most highly educated (Farmer and Ferraro 2005; Bell et al. 2020). Such findings have historical echoes: a study based on detailed collection of death certificates in the Carolinas across the twentieth century (Logan and Parman 2014) finds that, in the early twentieth century, Black workers in higher-status occupations had higher mortality than those in lower-status occupations—the inverse of the White pattern. Wealth does not protect against all forms of discrimination; indeed, it can intensify risk of certain kinds of discrimination by bringing Black people into settings in which few other people are Black (Colen et al. 2018; DeAngelis 2022) and where racial boundaries might be most actively defended (Christensen and Timmins 2023). These encounters are not benign; the evidence that experiences of discrimination can harm health through stress pathways is pervasive and convincing (Williams and Mohammed 2009; Lewis, Cogburn, and Williams 2015; Goosby, Cheadle, and Mitchell 2018), particularly for mental health outcomes (Paradies 2006), whose impacts on lifespan are indirect but likely meaningful, and whose impacts on the quality of life are clear.

Wealth-based reparations would not directly address one particular kind of discrimination with obvious import for health: discrimination by medical providers (Smedley, Stith, and Nelson 2003; Spencer and Grace 2016; Nong et al. 2020; McClure et al. 2020; Bavli and Jones 2022; Green et al. 2023; Brown et al. 2023), makers of medical devices (Kadambi 2021), and police and security guards in medical settings (Saadi and Ray 2023),[17] leading Black patients to have worse diagnoses, treatments, and outcomes.[18] Such mechanisms may explain the finding that Black Americans do not receive the same health returns on socioeconomic status that White Americans do (Boen 2016). Moreover, equivalent wealth will not necessarily provide the same health purchasing power to Black and White Americans; Black people typically pay more for goods and services of all kinds because of segregation (Williams, Priest, and Anderson 2016). Discrimination also limits the economic returns to wealth (Shapiro, Meschede, and Osoro 2013), particularly via smaller returns on housing investments (Thomas, Mann, and Meschede 2018).

To what extent do these lines of research bear on the question of what would happen if a major wealth-based reparations program were enacted? Research necessarily tells us in what ways wealth protects and fails to protect in the current context, in which racial wealth gaps are vast. It cannot directly tell us what wealth would or wouldn't be able to buy in the vastly different context of a truly large infusion of wealth into a sizable portion of the U.S. Black population, an instance of the "SUTVA [stable unit treatment value assumption] problem" in causal inference (Morgan and Winship 2014, 48–55). For example, if wealth currently fails to protect because some of its benefits are offset by creating greater exposure to certain kinds of discrimination, it might protect more fully in a context in which wealthy spaces were more often Black spaces. More broadly, wealth redistribution could indirectly improve health by re-

17. Notably, Altaf Saadi and Victor Ray's (2023) analysis of newspaper accounts detailing patients' experiences of police and security personnel violence in medical facilities found that health-care workers, as well as security workers, were implicated in many of the incidents (such as by calling on law enforcement to deal with combative patients). In other cases, hospital personnel (nurses, janitors, or other workers) were themselves the victims of police violence at work.

18. Medical research also substantially under-enrolls populations of color on average (Oh et al. 2015; *Scientific American* 2018), although the riskiest clinical research tends to overenroll vulnerable populations, including African Americans (Washington 2006), and mandates to deliberately increase racial and ethnic diversity in clinical trials are controversial (Epstein 2007).

distributing political power and might disrupt health consequences associated with being at the bottom of a social hierarchy, and positive feedback loops between increased health and improved political participation and democracy could result (Lynch 2023; Rodriguez 2018).

Consider neighborhoods. Neighborhoods are powerfully structured by income and wealth (Florida and Mellander 2015) and also powerfully structured by race independent of income and wealth (Taylor 2019; Coates 2014). Neighborhoods also seem to have some genuinely causal consequences for health, some of which flow through, for example, differential exposures to polluted air (Wodtke et al. 2022).[19] To what extent would wealth-based reparations disrupt Black Americans' differential exposure to pollutants? The answer seems to turn on the extent to which wealth allowed Black residents of the most polluted neighborhoods to move to safer ones (Pollack et al. 2023)—moves that, in the current context, are directly limited by discriminatory housing practices (Christensen, Sarmiento-Barbieri, and Timmins 2022)—and the extent to which a greater concentration of wealth increased Black communities' ability to fight for their current neighborhoods to become less polluted (Currie, Voorheis, and Walker 2023; LaVeist 1992; Williams and Collins 1995, 377–78). In terms of this example, one way to cast the challenge posed in this article is this: Would articulating the lifespan gap as an independent target of reparations policy suggest that wealth transfers be supplemented with reparative environmental policies? If so, the deep links between place and health suggest that seeking to equalize lifespans might finally allow people to realize the twin mobility rights long denied by America's racial regimes, the right to move freely and the right to stay where one is and have it be safe.

Finally, conceptualizing lost lifespan as a target of redress might serve an additional, expressive function: the social goods that follow from framing an injustice as something that needs repair (Russell 2022; Walker 2013).[20] The experience of the 9/11 Victim Compensation Fund, as recounted by Gillian Hadfield (2008), may be instructive. Many families filed for compensation much later than expected, and legal experts interpreted this as reflecting disorganization or an expectation of a greater monetary payoff through a lawsuit. Interviews with families, however, revealed that their reluctance in fact reflected a series of nonmonetary goals that they weren't sure could be achieved by the very large settlements being offered to them: information obtained through depositions, accountability for their losses, and political reforms that would reduce the chance of similar tragedies. The analogy may not hold. In the 9/11 case, people who had experienced a loss of great public concern had to decide "whether to resist the public characterization of their legal interests as private and monetary" (Hadfield 2008, 648); yet because the White-Black wealth gap is already socially defined as private, wealth-based reparations would seemingly reframe it as public. Lifespan-based reparations, of course, might also reframe that widely misunderstood disparity (Deyrup and Graves 2022) as well. Nevertheless, the 9/11 example illustrates that one yardstick for evaluating programs of repair is how fully they redress—or even acknowledge—the fullest extent of human freedoms that America's history of enslavement still tramples.

What Other Avenues Might There Be to Redress Lost Lifespan?

Proposals and policies that aim to redress short lifespans can adopt multiple strategies. They can target short lifespans directly, aiming to lengthen them. They can also aim to increase time freedom while people are still alive, perhaps granting greater control over time in total. Proposals can also be universal (indirectly racially equitable) or targeted, and targeted pro-

19. Air pollution exposure in early childhood also appears to have causal consequences for subsequent White-Black earnings gaps, which indirectly implies health and cognitive consequences of pollution (Colmer, Voorheis, and Williams 2023).

20. Many ethical and political traditions—more broadly than in proposals for programs of reparations for slavery and institutionalized racism in the United States—identify naming, acknowledging, and accounting for harm as the foundational step in repair (Walker 2013; Colvin 2006; Ruttenberg 2022; Clarren 2023).

Table 2. Typology of Example Avenues of Address

	Targeted	Universal
Directed at lifespan	mass expansion of Black medical workforce	Medicare for All, pollution enforcement, true public safety measures
Directed at other time loss	paid sabbatical	fair scheduling laws, reduced administrative burdens in public services
Open	Participatory budgeting-style program (targeted or universal)	

Source: Author's tabulation.

posals can also be outcome-oriented or process-oriented (participatory). Whether universalist policies can count—in the context of an articulated motivation grounded in naming a specific harm (Walker 2013; Táíwò 2022)—as a type of reparation, or whether they can instead function as a meaningful alternative to reparations (Reed 2016; Taylor and Reed 2019) is, to say the least, debatable (Klein and Fouksman 2022; Russell 2022); but it is, perhaps, notable that the quintessential universalist American health program, Medicare, grew out of the civil rights movement (Smith 2016). In the next section, I provide some examples of types of policies that might provide some redress for stolen time, noting more and less targeted versions of policies that adopt a similar strategy to recovering time that has been taken. These possibilities, discussed in turn, are typologized in table 2.

One possibility involves a New Deal–style expansion of the Black medical and public health workforces and community health infrastructure. A community health infrastructure (Chowkwanyun 2022) could include creating permanent bases of funding and other support for community vaccination initiatives founded during the COVID-19 pandemic to expand their work into other health arenas (Faherty et al. 2021; Bile et al. 2022), perhaps drawing on models of infrastructure built around community organizations that developed to help HIV/AIDS patients (Kayal 1993); it could also draw from examples of medical-community collaborations to address the maternal health crisis for Black birthing people (Hardeman et al. 2020). Measures to radically expand the Black medical workforce could perhaps constitute a specific form of redress for the 1910 Flexner Report, which led to the closure of all but two Black medical schools; one consequence is the estimated loss of between ten thousand and thirty thousand Black medical graduates between the schools' closure and 2019 (Campbell et al. 2020) and an unknown number of practitioners of adjacent medical professions (McLemore 2022, 51). To succeed, such efforts would need to also address factors that drive would-be Black medical and health workers out of their chosen professions, such as the "overpolicing" of Black medical residents (Ellis et al. 2023).

Evidence suggests that expanding the Black doctor pool could be extremely consequential for improving Black health. Research finds county-level correlations between Black primary care physicians and Black life expectancy (Snyder et al. 2023) and finds that Black newborns are twice as likely to survive the days surrounding birth if they have a Black physician (Greenwood et al. 2020). Particularly compelling is a unique experiment based on an Oakland clinic that randomly assigned doctors of different races to Black male patients. Analysis of doctors' notes suggested that the Black doctors had higher-quality interactions with their Black patients than other doctors did, and understood their health struggles more holistically in context of their life circumstances. Most strikingly, the study found results about patients' willingness to embrace preventative measures that, if scaled up to the population, suggested that having enough Black doctors could reduce men's Black-White gap in cardiovascular mortality by 19 percent (Alsan, Garrick, and Graziani 2019). Notably, however, the context in which Black doctors make such a sig-

nificant difference is one in which Black men suffer so many risk factors for cardiovascular disease; in a context that successfully addressed the nonmedical sources of this disproportionate disease burden, Black doctors would have fewer lives to save.

This type of policy would be relatively targeted; more universalist versions could be policies such as Medicare for All or other single-payer health system, expanded enforcement of pollution laws, or measures designed to limit gun deaths. Despite the targeted nature of an expansion of the Black medical workforce specifically, any such expansion would likely also produce a model for similar expansions directed at the rural medical workforce, which might considerably improve White health and longevity as well (Simpson 2020; Gujral and Basu 2019).

A different approach would be to try to increase time freedom among the living. Universalist possibilities abound: fair scheduling laws (Schneider and Harknett 2019) and other workplace protections; efforts to aggressively reduce the administrative burden required to receive social services (Herd and Moynihan 2019; Herd et al. 2023; Jackson 2021); targeted improvements to transit infrastructure or expansion of work-proximity housing for populations with particularly burdensome commutes (Roberto 2008; Preston and McLafferty 2016); and policies, like Sunday closing laws, that promote access to predictable and shared time (Rose 2016), to name a few. A policy that could be implemented in a targeted or a universalist form would be a paid sabbatical program (Day 2019). Higher education faculty sabbaticals are, among other things, a form of work time that nevertheless has salutary effects on well-being (Davidson et al. 2010); a reparative sabbatical could, instead, be a paid period free of any work or governmental obligations, with the right to return to work guaranteed (as with leave, from some employers, under the Family Medical Leave Act, for example), in which sabbatical-takers could pursue whatever they chose.

Programs and policies that reduced time burden might also have multiplier effects through improving health and thus ultimately lifespans, as suggested by, for example, Cynthia Colen and colleagues' (2023) systematic framework identifying time use as a social exposure that patterns health inequities. Lack of time is a major driver of unhealthy behaviors (Strazdins et al. 2011; Venn and Strazdins 2017; Covert 2022; Jabs and Devine 2006) and of stress (Mullainathan and Shafir 2021), and consistent, long-term reductions in time scarcity might plausibly shape the subjective time valuations that also influence health behaviors (Daugherty and Brase 2010). Parents' and kin's greater control over time in key moments in children's and other loved ones' lives might also produce spillover benefits to health (Stearns 2015).

A final category is participatory. Redress might take the form of a dedicated reparations fund, distinct from individual payments, meant to target lost time in particular. A collaborative process among those deemed eligible for individual payment, whether African descendants of slaves or some broader constituency (Jones 2021), could allow recipients to decide collectively what would do the most to return their time to them. Such a process could be modeled on examples of participatory budgeting (Fung and Wright 2011) and draw on lessons learned in analyses of victim compensation funds, such as the importance of recipients feeling like active participants (Feinberg 2005, 274–75). No one can better determine what would return time to the people it is being stolen from than those people themselves. Moreover, participatory processes could, perhaps uniquely, remain open to identifying—and seeking to ameliorate—further, potentially overlooked, dimensions of harm arising from slavery and Jim Crow that can still be redressed, for survivors and descendants, today.[21]

21. For example, time loss is itself only one form of a broader, multidimensional well-being, transcending wealth, that has been denied to enslaved people and, disproportionately, to their descendants. Benjamin Schneider (2022) argues that another consequential component of well-being is job quality, encompassing not only pay (and stability of employment) but also control, risk (to health), intensity, and repetitiveness; although it is not relevant to Schneider's historical study, one might also imagine job meaningfulness. One might envision participatory processes with a broad remit seeking to address many distinct dimensions of harm to wellbeing in

On the other hand, there may be something unsatisfactory about seeking to redress a population's lost time through a process that demands of that same population that they take part in a time-consuming process of political participation (on the time demands of participatory democracy, see Cohen and Rogers 2003). Moreover, even though the strength of a participatory process is precisely its open-endedness, that very characteristic can be hard to maintain in practice. "The democratic process begins by defining the democratic body" (Demsas 2023) and the geographic scale at which participatory processes take place would likely circumscribe what kinds of options they could realistically consider.

CONCLUSION

In *How the Word Is Passed,* his book on how slavery is remembered and forgotten in the United States, Clint Smith (2021, 104) quotes a poem that Mark King published in the Angola penitentiary's prison magazine, *The Angolite*:

> A century of forced labor, blood and pain.
> Lives wasted, buried in shame.
> Slavemasters oversee their daily tasks
> Hidden behind century-old sadistic masks.
> The world has passed this deathly land by.
> The inhabitants still ask why.

"Lives wasted, buried in shame." The poem evokes the memoirist and theorist Hafizah Augustus Geter: "I began to name my shame what it really was: America testing how long its history could last" (2022, xxvii). This is the fundamental harm that cries out for redress. Slavery was predicated on stealing human beings' labor—their time and effort and creativity. This theft cannot be reduced to the theft of the wealth that they produced, because the ways that enslavement wasted lives were not only misdirected outputs, but also misdirected inputs: turning human beings' most human qualities into instruments for others' wealth and freedom at the expense of their own. The historian Walter Johnson (2016) puts this point like this (in an essay that Smith also draws on):

> [The] language of "dehumanization" is misleading because slavery depended upon the human capacities of enslaved people. It depended upon their reproduction. It depended upon their labor. And it depended upon their sentience. Enslaved people could be taught: their intelligence made them valuable. They could be manipulated: their desires could make them pliable. They could be terrorized: their fears could make them controllable. And they could be tortured: beaten, starved, raped, humiliated, degraded. It is these last that are conventionally understood to be the most "inhuman" of slaveholders' actions and those that most "dehumanized" enslaved people. And yet these actions epitomize the failure of this set of terms to capture what was at stake in slaveholding violence: the extent to which slaveholders depended upon violated slaves to bear witness, to provide satisfaction, to provide a living, human register of slaveholders' power.

Johnson's point, as I read it, is that a plantation owner or householder who obtained a wealth-making machine would not get all the things from it that they got from enslaving human beings.[22] This point is relevant, though less relevant than that someone who had all their wealth stolen from them would not lose anything like what was taken from people who were enslaved. From both perspectives, wealth is a by-product of the true theft: the theft of hu-

creative ways. This suggestion is broadly consistent with the approach taken by Olúfémi O. Táíwò (2022), who argues for aggressive decarbonization efforts as a form of reparations for slavery and colonialism.

22. The slavery scholar Saidiya Hartman makes a similar point about "the category crisis of human flesh and sentient commodity" differently: "In the archive of slavery, I encountered a paradox: the recognition of the slave's humanity and status as a subject extended and intensified servitude and dispossession, rather than conferring some small measure of rights and protection. The attributes of the human—will, consciousness, reason, agency, and responsibility—were the inroads of discipline, punishment, and mortification. This paradox foreshadowed the subject of freedom and the limits of personhood bound indissolubly to property" (Hartman 2022).

manity. There is something deeply limiting about reducing the meaning of stealing human beings' lives to stealing the wealth that they produced.

Despite this limitation, wealth has—legitimately—been the focus of efforts at repair because wealth confers expansive, flexible power in a way that almost nothing else does. Perhaps a further reason that efforts at redress have focused on wealth is that it is transferable and fungible. Wealth is passed over generations; this is one major mechanism by which the theft of wealth hundreds of years ago creates injustice anew today, and it also creates a commonsense target for redress. But time does not transfer; no redress is possible for lives already cut short. That stark impossibility has no solution, and yet it also should inform the urgency with which any attempt at repair is undertaken; in the Evanston, Illinois, housing reparations program, six eligible would-be recipients have already died on the waiting list (Newton and Nelsen 2024).

At the end of Brittany Allen's (2022) *Redwood*, about slavery's reverberation through generations, the play's main protagonist Meg poses a question of her ancestors: "I guess I wonder if they ever dreamed about *us*." Four ancestors respond. Napoleon, the son of an enslaved woman and an enslaver, freed in his father's will, says, "Dear clan: I did, I dreamed of you. Of course I dared to hope my descendants would know more freedom than I did. And your Great-Great-Great-Great Grandpa Napoleon would smile now to see you moving your beautiful brown bodies with abandon, to see the resilience that lives on in your cells." But that enslaved woman herself, Napoleon's mother Alameda, has a very different perspective, that culminates this way:

> Did I dream about you?
> When my tendons were slashed, my babies taken away?
> no, children, no
> there was no time for dreaming
> He raped me for years and years.
> I was never not pregnant, I was never not terrified, and as you cannot imagine my pain, I
> cannot bless your pleasure
> if I had it my way, y'all wouldn't exist. None of you. For there can be nothing good across a
> line like this.

As Alameda insists, no freedom for her son and his children and their children could redress what was done to her. There can be no redress for the theft of lifespans in the past. Yet, by the same token, no future redress will be possible for the lives being cut short now, for the millions of Black Americans who will die younger than they would had they lived and died like White people do, and who cannot live and die like White people do because they live in a country that built itself through enslaving Black people. The time for redress was in the past; it also is now.

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Using Urban Renewal Records to Advance Reparative Justice

ANN PFAU, KATHLEEN LAWLOR, DAVID HOCHFELDER, AND STACY KINLOCK SEWELL

By describing how the federal urban renewal program harmed displaced tenants and property owners, this article intends to encourage discussion of potential remedies by study groups, commissions, and community activists. In addition to loss of property, these harms include inadequate reimbursement payments, diminished business and rental income, and higher post-relocation housing costs. Using Kingston and Newburgh, New York, and Asheville, North Carolina, as case studies, the article demonstrates how researchers can document the need for reparative justice policies using historical data drawn from local archival collections.

Keywords: urban renewal, eminent domain, redlining, housing discrimination, involuntary relocation, displacement, just compensation, fair market value, New York, North Carolina

Urban renewal was the primary federal response to the so-called post–World War II urban crisis (Orlebeke 2000; Teaford 2000; Von Hoffman 2000). Suburbanization (a process subsidized by other federal policies that supported the construction of urban expressways and suburban houses), the decline of downtown retail activity, and the influx of African

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Americans and Puerto Ricans into northern cities convinced housing advocates and business boosters alike that the only way to save the American city was to tear down "blighted" "slum" neighborhoods and replace them with modern residential and commercial structures. The initial goal was to improve housing conditions for low-income residents, but, as the urban renewal program expanded, that goal receded as local leaders looked to increase their city's tax base.

A facially color-blind policy, the federal urban renewal program did disproportionate damage to black families and communities. Nationwide, urban renewal displaced around 334,000 families and 169,000 single-person households, or approximately 1.36 million individuals, between 1950 and mid-1971.[1] About 60 percent of those displaced were nonwhite, and roughly the same percent were tenants. Many were elderly, and most were poor (HUD 1972, 80; U.S. Congress, House Committee on Public Works 1965, 15–21, 106–107; HUD 1966, 9; U.S. Congress, Senate Subcommittee on Housing for the Elderly 1962, 3, 7; HHFA 1966, 337–38; Digital Scholarship Lab, n.d.). In some places, the targeting of communities of color was clearly deliberate. Cincinnati's Kenyon Barr project destroyed the city's West End neighborhood, displacing at least 4,953 families (more than 97 percent black), to make way for a light-industrial district and expressway (Cebul 2020; Meyer 2019). Such projects led critics like James Baldwin (1963) and Charles Abrams (1965, 24) to conclude that the real goal of urban renewal was "Negro removal" and "retenanting the sites with white, taxpaying citizens."

Although urban renewal was funded by federal grants and loans, this article focuses on local records because local officials made the many decisions that disrupted hundreds of thousands of lives. Municipal governments were responsible for planning and implementing individual projects. Local political leaders, prominent businessmen, and their preferred consultants decided which properties to seize, which people to relocate, and how and for whom to rebuild. Project files—now preserved in municipal archives, academic and public libraries, and historical societies—document both how local leaders planned a more prosperous future and how poorer, less powerful, and disproportionately black people bore the brunt of these plans. They also reveal how redlining and residential segregation amplified the damages imposed on black displacees.

Combining data gleaned from federal reports, congressional hearings, and hundreds of cubic feet of municipal records, this article details the mechanisms through which forcible displacement harmed residential and commercial tenants and property owners. It illustrates how to use archival records to estimate the loss of intergenerational wealth due to property seizure. It explains how urban renewal programs in cities across the nation facilitated transfers of land and wealth from the displaced to the powerful. Finally, it explores how scholars, legislators, and the descendants of displacees can and have used urban renewal records to advance reparative policies. The goal is to support and inform such efforts.

THE CHANGING SYSTEM OF FEDERAL REIMBURSEMENTS

Over the course of the 1960s, the inequity of urban renewal became increasingly obvious as urban protests erupted and more and more people were displaced to facilitate redevelopment. In response, Congress made changes to federal policy—culminating in passage of the Uniform Relocation Act of 1970—that lifted some of the economic burdens of forcible displacement off the shoulders of residents and business owners. In general, reimbursement improved over time (see table 1).

A provision to reimburse moving expenses first appeared in the Housing Act of 1956. Before then, displaced residents received no financial assistance at all. The Housing Act of 1964 was the first to include additional payments to low-income residential tenants and property owners, who were eligible for but unable to secure public housing units. That year, a U.S. Census study found that following relocation, most families paid a higher percentage of income toward housing than before (HHFA 1966). Small business owners were, likewise,

1. Using the average family size of 3.58 persons in 1970.

Table 1. Reimbursement Payments in Federal Legislation

	Compensation				
Sources	Moving Expenses (Residential)	Moving Expenses (Commercial)	Additional Payments to Homeowners[a]	Additional Payments to Residents[b]	Additional Payments to Small Business Owners[c]
Housing Act of 1956	Up to $100.	Up to $2,000.			
Housing Act of 1964	Up to $200.	Up to $3,000, more if expenses certified.		Up to $500 to a family or to an individual sixty-two years or older. Both tenants and homeowners were eligible.	Up to $1,500.
Housing Act of 1965			Reimbursement of expenses incurred as a result of the property's seizure.		Up to $2,500 plus reimbursement of related expenses.
Housing Act of 1968			Up to $5,000 for purchase of standard replacement housing.	Up to $1,000 over two years. Disabled individuals were also eligible, but homeowners who received replacement housing payments were not.	
Uniform Relocation Act of 1970	Up to $300 plus an additional $200 dislocation allowance.	Actual expenses (including search for replacement property) plus direct losses due to the forced move or closure.	Up to $15,000 for purchase of standard replacement housing and reimbursement of related expenses.	Up to $4,000 over four years. Could be used toward a downpayment. All displacees were eligible except homeowners who received replacement housing payments.	$2,500–$10,000 in lieu of moving expenses.

Source: Authors' compilation.

[a] Owner-occupiers of one- or two-family dwellings.

[b] Only those who relocated to standard private dwelling units were eligible for this payment.

[c] Businesses that were not part of a larger enterprise with additional outlets.

entitled to compensation for lost patronage, beginning in 1964.

In 1965, Congress took the first step toward reimbursing the specific losses experienced by displaced homeowners. Before then, owners simply received payment for the appraised value of property seized minus closing costs. The Housing Act of 1965 authorized local agencies to pay "reasonable and necessary expenses incurred for 1) recording fees, transfer taxes, and similar expenses incidental to conveying real property. . . 2) penalty costs for prepayment of any mortgage. . . and 3) the pro rata portion of real property taxes."[2] Three years later, the Housing Act of 1968 added a supplemental payment for owner-occupiers intended to make it possible for them to purchase equivalent housing without going into debt.

The Uniform Relocation Act expanded and codified these gains across all federal and federally funded land acquisition programs. The intent of this new law was to ensure that forcibly displaced persons "not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole."[3] Despite this laudable goal, our research reveals that some displacees were denied benefits, the justification being that they relocated to housing deemed substandard by local officials. The problem was—despite assurances in applications for renewal funding—municipalities did little to ensure that "decent, safe, and sanitary" dwelling units were affordable and available to the people they displaced (Hartman 1971, 803–16).

URBAN RENEWAL IN THREE CITIES

This article explores how four urban renewal projects in three cities (Newburgh and Kingston, New York, and Asheville, North Carolina) affected the lives and fortunes of forcibly displaced tenants and property owners. These places are the focus of two research projects on the history, economics, and reparative policy implications of urban renewal. They are small and midsized cities, like the majority of those that received federal urban renewal grants (Appler 2017). Most important, in all three cases, relatively complete archival collections enable documenting financial and nonmonetary harms. Although it is impossible to generalize based on such a small sample, our goal is to demonstrate how researchers in other locations can use similar collections in support of both history projects and reparative justice processes. Because many such collections have been lost or destroyed, these records are valuable not just for what they preserve about a particular place but also, collectively, for the light they shed on the renewal process writ large.

The populations displaced by these four renewal projects were disproportionately, if not majority, black. Black homes and businesses were easy to target due to decades of residential segregation. From earliest to most recent, the projects are Water Street in Newburgh, New York; Broadway East in Kingston, New York; East Riverside in Asheville, North Carolina; and East Newburgh, in Newburgh, New York.

Water Street, 1961

The earliest of the four was a clearance-only project targeting the small city of Newburgh's growing black community. The same community was the focus of a notorious and punitive thirteen-point welfare reform program (Boussac 2023), which, like urban renewal, reflected white political leaders' contention that southern migrants were responsible for blighting the city's once-grand riverfront. The Water Street renewal plan called for the demolition of 241 structures, most of them residential or mixed-use. As a result, 282 families, fifty-one individuals, and fifty-four businesses were displaced. At least sixteen of the businesses never reopened. More than 90 percent of the displaced residents and many of the business owners were black at a time when the city's population of 30,979 was 83 percent white. Most residents and businesses were forced to move before passage of the Housing Act of 1964 and so received only reimbursement for moving expenses. A church-sponsored housing complex was built on this land. The rest remains vacant (Pfau and Sewell 2020; U.S. Bureau of the Census 1961, 34–47, 34–107; 1953, 32–94; HUD 1966, 44; Newburgh Ur-

2. Housing and Urban Development Act, Pub. L. 89–117, 79 Stat. 451 (1965).

3. Uniform Relocation Assistance and Real Property Acquisition Policies Act, Pub. L. 91–646, 84 Stat. 1894 (1971).

ban Renewal Agency, boxes 11, 23 [administrative]).

Broadway East, 1965

Kingston city leaders intended Broadway East to be the first of three renewal projects in a downtown residential and commercial district. The other two renewal plans were never implemented. Although Kingston's population of 29,260 was 96 percent white in 1960, roughly a third of the families displaced were black. In all, 361 families, 104 individuals, and ninety-four businesses were displaced. This population skewed elderly (21 percent of family heads and half of individuals were over sixty) and poor. Among those displaced was a large group of widows and widowers along with welfare recipients and divorcees. Most moved before the Housing Act of 1968 took effect. Unlike the Water Street project in Newburgh, the Broadway East plan included provisions for rehabilitating properties adjacent to the clearance areas. Today, most of the cleared land has been resold and reused (Raymond & May Associates 1961; U.S. Bureau of the Census 1961, 34–47; Kingston Urban Renewal Agency, boxes 18, 19, 36).

East Riverside, 1966

Unlike Newburgh, Asheville's black population steadily declined in the wake of World War II. Before urban renewal, the 425-acre East Riverside project area in Asheville's historically black Southside neighborhood was home to roughly four thousand residents, more than a third of the city's black population of 11,426 in 1960 (total population 60,192). The initial plan was to divide the area almost in half; properties in the less-populated section were to be cleared, the others, rehabilitated. In practice, more buildings were demolished than rehabilitated. The project ultimately displaced 585 families, 245 individuals, and seventy-four businesses, among them rehabilitation-area tenants and property owners. Roughly 97 percent of those displaced were black, and most were reimbursed under the provisions of the Housing Act of 1968. On the area cleared for redevelopment, the city built a new park and a public housing complex, into which many of the displaced tenants moved. An area zoned for commercial use is now occupied by medical facilities. This was not the end of publicly funded forcible displacement of majority black communities in Asheville. Smaller projects were later funded under the Community Development Block Grants program (U.S. Bureau of the Census 1953, 4; 1961, 35–31, 35–59; 1973, 35–51, 35–69; Mace 1967; Housing Authority of the City of Asheville, boxes 49, 56, 147).

East Newburgh, 1969

Newburgh's second urban renewal project encompassed the first and, again, targeted black residents, businesses, and social institutions along with the city's small but growing Puerto Rican community. By this time, the city's black population had increased to 30 percent, due more to white flight than black migration. Under the terms of the Housing Act of 1968 and the Uniform Relocation Act, the East Newburgh project displaced an estimated 432 families, 153 individuals, and seventy-four businesses, probably more, because some rehabilitation-area buildings were acquired by the city for demolition or resale. Today, those houses are some of the most desirable in the city. On cleared land now stand a new condominium complex, state highway, parking lots, and public buildings—a library, police headquarters, and community college campus (Pfau and Sewell 2020; U.S. Bureau of the Census 1973, vol. 34, 70, 123; Newburgh Urban Renewal Agency, box 9 [engineering department]).

URBAN RENEWAL RECORDS

Local archives are essential for both documenting who was harmed and determining what these displaced residents and business and property owners are owed. The relevant records fall into two broad categories: residential relocation files and property acquisition records.

Residential relocation files document household demographics and finances, as well as the nature and amount of payments received. Relocation cards were standard forms that the federal government encouraged local administrators to use. They list the names, relationships, ages, occupations, and incomes of household members, as well as information about rent or mortgage amount and length of tenure. Although most of these files record relocation officers' observations, some include

letters from the residents themselves, giving voice to their frustrations.

Property acquisition records contain deeds, title searches, appraisals, payment vouchers, and correspondence with owners. These records document the property's appearance, location, use, and prior sales price; the owner's name along with taxes paid and owed; and the number (and sometimes names) of tenants. Many contain evidence of redlining. For example, planning appraisals done in 1958 for Newburgh's Water Street project include the boilerplate text, "Area generally undesirable. . . . Current neighborhood has no identity except as a slum area. Conventional and institutional mortgage money financing difficult" (Newburgh Urban Renewal Agency, box 9 [administrative]). Routine correspondence between local officials and their consultants (lawyers, appraisers, title searchers) can be found in most acquisition files. In some cases, these files contain letters from owners or their representatives and transcripts of condemnation court proceedings. In Kingston, property owners wrote "hardship" letters to renewal agency officials explaining why they hoped for quick action to close on their property. These letters detail financial losses and describe how quality of life declined as the renewal area emptied out.

What researchers can find in local archives is limited. The records that survive have done so through a mix of bureaucratic forgetfulness and public interest in renewal's local legacy. Even when they are accessible and in good condition, most collections are incomplete, especially when it comes to relocation. This is true of the three collections on which this article is based. But there are workarounds. In Asheville's records, Lawlor found a ledger with a list of East Riverside tenants and property owners, the type of housing they relocated to (public housing, private rental, or private sales), and the size and category of reimbursement payments they received (Housing Authority of the City of Asheville, box 56). In Kingston and Newburgh, Pfau, Hochfelder, and Sewell were able to cobble together fuller lists of those displaced using renewal agency payment vouchers, planning surveys, on-site tenant lists, and appraisals. Oral histories, local newspapers, tax rolls, deeds, and city directories can also fill in some of the blanks.

MECHANISMS OF LOSS

Not everyone harmed by the federal urban renewal program was black. Displacement and dispossession, nevertheless, tended to be more costly for black residents and business and property owners due to redlining and residential segregation. Black owners were less likely than their white counterparts to receive adequate reimbursement for seized property. Black residents had to spend more time searching for housing in crowded, overpriced, and underresourced areas, because they were not free to rent or buy in most other neighborhoods. At the same time, the median annual family income of black displacees ($3,139) was significantly lower than white ($4,797) in 1964 (HHFA 1966, 338), rendering them more vulnerable to financial shocks.

As a result of urban renewal, property owners, no matter their race, lost the power to determine the conditions under which to sell their property. Although there was some room for negotiation between owners and local officials, appraisers' judgment was key to determining acquisition prices. Many appraisers worked for several agencies in one region. During the heyday of urban renewal, they had a great deal of power and influence. Humes Flynn, for example, not only helped local officials determine what price to offer renewal area owners in Newburgh, Kingston, and elsewhere, he also helped expand Newburgh's renewal plan. Writing of the Water Street renewal project, which would destroy a black residential and business district, he acknowledged that it was "a large undertaking" for a small city like Newburgh. Nevertheless, he advised the city to clear an additional one hundred acres, also majority black, for which he would later win appraisal contracts. Flynn opined that otherwise the initial project would be "a miserable failure" (Newburgh Urban Renewal Agency, box 46 [administrative]).

"Fair market value" is a legal construct that presumes both a willing seller and appraisers' ability to determine what an informed buyer would pay for a particular property. The problem is that official offers based on fair market

value bore little relation to what renewal area owners had invested in their properties. Merrill and Ida Robinson, for example, purchased 140 Water Street in Newburgh for $10,200 in 1955. In 1958, they made $4,300 worth of improvements, installing a new heating system, updating the plumbing and electrical service, and turning the storefront into a bar. They operated Robinson's Lounge on the ground floor and lived in the apartment above. In 1963, the Newburgh Urban Renewal Agency offered to buy the property for $8,000, which was $500 less than Flynn's recommended price. The Robinsons refused to sell until after the agency commissioned a third appraisal. They finally settled for $11,000 in 1967 and received a small business displacement payment of $2,500 on top of the purchase price. But this delay ate into the Robinsons' profits. Tax returns submitted as part of their application for reimbursement reveal that between 1965 and 1966, their business earnings declined by 22 percent, roughly $1,250 (Newburgh Urban Renewal Agency, box 11 [administrative]). Even when renewal agencies purchased property for more than the capital invested, that amount was often too low to enable the displaced owner to purchase an equivalent building without taking on additional debt—particularly before passage of the Housing Act of 1968 (U.S. Commission on Urban Problems 1969, 177; Downs 1970, 196–97). Racial disparities in wealth and income combined with racist real estate practices (such as steering black buyers toward a shrinking and dilapidated supply of sales properties) placed both additional burdens on those buyers and unfair limits on their opportunities to profit.

Due to redlining, the difference between the price renewal area property owners paid and the reimbursement they received was particularly stark in black neighborhoods. Redlining meant not only that many buyers overpaid for property but also that their ownership (and thus right to reimbursement) could be hard to establish. In place of traditional mortgages, exploitive contract sales were common in northern cities. These rent-to-own arrangements left most of the power in the hands of the seller, who continued to hold the deed even after the deal was signed. If the buyer was late with a monthly payment, the seller could unilaterally cancel the contract, evict the buyer, and hold on to all the money paid to date (Samuel Dubois Cook Center on Social Equity 2019; Dagen and Cody 1961; Satter 2010; U.S. Congress, House Committee on Public Works 1965, 86–88). Humes Flynn reported coming across such contracts in Newburgh, stating they were "necessary because mortgage financing is practically non-existent." Furthermore, some contract sellers admitted to Flynn that they had inflated sales prices to get around New York's usury laws, which capped interest at 6 percent (Newburgh Urban Renewal Agency, box 46 [administrative]). Because contract sales were rarely recorded, properly identifying and compensating rightful owners could be difficult. Economist Anthony Downs estimated that fewer than half of contract buyers received compensation for property seized by state and local authorities (U.S. Congress, Senate Committee on Public Works 1968, 309).

To elderly homeowners, renewal threatened both property and independence. In 1965, Paul Niebanck and John Pope documented a direct relationship between old age and loss of homeownership (128–29), which our archival research confirms. Some former owners moved in with adult children. Others rented private apartments or units in publicly financed senior housing developments. Many had chronic illnesses; some did not survive the move. Before the Senate Special Committee on Aging (U.S. Congress 1964, 175), Harry Karpeles of the Massachusetts Committee on Aging testified that the stress of relocation was a "threat" to "the security and state of mental health of older people." "Overwhelmingly," he explained, "they are a class of citizens with minimal means of support, they are in poorer health than the rest of the population, they have less physical strength, they have less familial support." This is borne out by many of the "hardship" letters in the Kingston records. Sarah Kramer, for example, wrote, "I never paid rent since I was married, that is 53 years ago. And now that I will essentially have to get out of where I am, I will have to pay rent as at this age it would not pay to buy." The rest of the money would go toward paying her ailing husband's doctor's bills (Kingston Urban Renewal Agency, boxes 36, 84). Likewise in Asheville, homeowners who be-

came tenants, including the two cases considered in the following section, tended to be age sixty or older and in ill health. The displacement of elderly residents (both owner and tenant) was so prevalent nationally that the Senate Special Committee on Aging established a Subcommittee on Involuntary Relocation of the Elderly. Between October and December 1962, subcommittee members and staff traveled across the country investigating conditions on the ground and exploring the particular needs of this large and growing demographic (U.S. Congress, Senate Special Committee on Aging 1962).

Between 1949 and 1972, roughly 105,000 businesses, most of them small, were displaced as a result of urban renewal (HUD 1972, 83). Many—particularly those dependent on a neighborhood customer base built up over years, even decades—never reopened. Sociologist Basil Zimmer's survey of Providence, Rhode Island, businesses displaced by urban renewal between 1953 and 1959 found that roughly 40 percent discontinued business after displacement. The hardest hit were family-run restaurants and grocery stores "that had a close and frequent relationship with their customers." Marketing professor John Alevizos's results were similar. He surveyed 471 urban renewal agencies, responsible for having displaced 8,982 businesses through March 1963. He found that 28 percent of those businesses had "either liquidated or disappeared." An additional 9 percent had moved out of the agency's jurisdiction. Based on these findings, Alevizos estimated that without a change in reimbursement policy, urban renewal would cause thirty-five thousand businesses to close by 1972. A second study based on data from city directories confirmed these findings and revealed that the rate of business dissolution tripled as a result of forced relocation (Zimmer 1966, 382; U.S. Congress, House Committee on Public Works 1965, 121–22). Business and residential landlords lost rents over the course of several years, even before an urban renewal project reached the execution stage. Tenants started moving out as soon as they realized renewal would affect their homes or livelihoods. Many of those who remained demanded discounted rents.

Once a renewal project reached the execution stage, conditions grew worse. Vacant properties attracted vandals and arsonists to the area. Junked cars accumulated in vacant lots. Dust and dirt abounded as a result of demolition. Heavy machinery damaged streets and sidewalks, making it difficult, even dangerous, to get around. Yet landlords and commercial tenants who wished to receive reimbursement payments were obliged to stay put, paying taxes and rent until the city took possession of their places of business. In recognition of this financial damage, the federal government began authorizing small business displacement payments beginning with the Housing Act of 1964. Whether these payments enabled small business owners to relocate successfully and without loss remains an open question.

Urban renewal projects moved from planning to acquisition, relocation, and redevelopment in stages and over multiple years. As Anthony Downs (1970, 199–202) has argued, this drawn-out process had a negative effect on property values. Known as "condemnation blight," this loss of value was a direct result of renewal. In the face of reduced rental income and impending demolition, owners were understandably reluctant to improve or repair their properties. In 1972, appraiser Justus Schwaner described how this process played out in Newburgh. Renewal area residents and owners had known since 1956 that city officials were planning an urban renewal project in their neighborhood. From their perspective, "the only safe thing to do was to get out" as soon as they could, thus precipitating "a sharp decline in property values." Sixteen years later, the "area was firmly in the grip of urban renewal blight," because "no prudent owner . . . would make repairs or acts of maintenance with the sword of condemnation hanging over his head." A. G. Carver Jr., a black property owner in Asheville, expressed the same concern at a public hearing in 1962, fearing that the "value of land can only go down from the planning process to actual acquisition" (Newburgh Urban Renewal Agency, boxes 15 [appraisals], 46 [administrative]; Kanner 1973; Carver, quoted in Nickoloff 2015, 54).

Such blight figured prominently in the condemnation case brought by the Newburgh Urban Renewal Agency against Lillian Watson.

Mrs. Watson owned a mixed-use building, out of which she ran a liquor store. She also rented out a second storefront and five apartments, income from which she estimated at more than $4,000 per year. She refused to settle for the agency's initial offer of $12,800 or the later offer of $13,500, both lower than its appraiser Humes Flynn's $14,500 estimate of fair market value or the $18,000 estimate of the appraiser she hired. Mrs. Watson had purchased her property for $9,500 and made major improvements—adding central heat, a new electrical service, updated plumbing, and fire escapes. Six years after the Water Street project went into execution, her case went to condemnation. By then, her tenants had moved out and vandals had stolen plumbing and electrical fixtures. Unlike many property owners, she could afford the services of a lawyer and appraiser to argue her case. Condemnation court commissioners found that the "deterioration of the premises between the alarm with respect to Urban Renewal and the actual taking of the premises . . . was in our opinion the direct result of the long delay on the part of urban renewal in acquiring the premises" and that the correct value at the time of taking was $16,900 (Newburgh Urban Renewal Agency, box 35 [administrative]).

Residential tenants lost money and time to urban renewal, particularly before passage of the Uniform Relocation Act. A 1964 Census survey of displaced households found that median gross monthly rent increased from $66 to $74 after relocation. This was a significant increase given that the median annual income of this group was $3,814, and 40 percent earned less than $3,000. Tenants also paid a larger percentage of their incomes toward housing after relocation; the survey found that the median rent-income ratio increased from 25 to 28 percent. Likewise, more than a third of relocatees reported spending "much more time" traveling to and from work. Roughly the same percentage found shopping to be "much less convenient." (Many renewal area residents did not own private automobiles.) Chester Hartman uncovered an even more dramatic increase in median rent from $41 to $71 per month among households displaced from Boston's West End. The median rent/income ratio increased from 13.6 to 18.6 percent. Among elderly tenants, Niebanck and Pope found that the majority paid more rent after relocation, a median increase of $8 per month, and spent more than a quarter of their income on rent (HHFA 1966, 344–47; Hartman 1966, 309–11; Niebanck and Pope 1965, 130–32). All three studies focused on the period before the Housing Act of 1964 took effect, when displaced residents were entitled only to compensation for moving expenses. Furthermore, U.S. Department of Housing and Urban Development (HUD) statistics reveal that only 71 percent of displaced households and 64 percent of individuals were reimbursed for moving expenses with average payments of $73 and $48 respectively. Roughly ninety-three thousand families and twenty-eight thousand individuals received no compensation whatsoever (HUD 1972, 80–83).

In addition to higher rent, tenants bore the cost of searching for replacement housing. For black displacees, particularly those with large families, the process of finding new housing could be especially burdensome. In 1961, the New York State Committee on Civil Rights reported that "The relocation plans submitted to the Urban Renewal Administration and then approved by that federal agency are mostly fictional, illusory, and unrealistic so far as they affect . . . minority groups. The fact of the matter is that discrimination in private housing is the basic stumbling block in developing realistic relocation plans" (U.S. Commission on Civil Rights 1961, 438).

The experience of Kingston displacees confirms this finding. In 1965, the local chapter of the Congress of Racial Equality found that the city's relocation plan was "inadequate to meet" local needs due to widespread housing discrimination (Kingston Urban Renewal Agency, box 58). The same was true in Newburgh. In 1962, Sally Sharpe was pregnant with her fifth child when she and her family were forced to move in order to conform to the Newburgh Urban Renewal Agency's demolition schedule. The family, thus, became tenants of the renewal agency, an experience common to black residents with large families. The Sharpes' temporary home lacked both a hot water heater and a tub, meaning that while pregnant, Mrs. Sharpe had to boil and carry water in order to bathe herself and her family. For months, the property man-

ager promised but failed to fix the problem. The following summer, awaiting a second on-site move, Mrs. Sharpe wrote to federal Housing and Home Finance Agency Administrator Robert Weaver (and copied Newburgh officials),

> the Negroes residing in the Urban Renewal areas are being pushed from one slum to another. . . . The question in our minds now is WHERE? Apartments are not available, and to purchase a home in Newburgh means "ganging up" in Negro seclusion. Most of the homes offered to Negroes in this city . . . were not made available until slum conditions were evident. Most of the purchases had to be financed by out-of-town banks, since Negroes are not availed this service in Newburgh.

It took until the summer of 1966 for Sally and Gilbert Sharpe to find a new home, in part because they also had to find a new location for his barbershop. They ended up about a block from what would become the East Newburgh renewal area (Newburgh Urban Renewal Agency, boxes 11, 64 [administrative]).[4]

Losses were not confined to urban renewal areas. Small businesses in adjacent neighborhoods lost part of their customer base. Some people lost their jobs. Property lost value due to dust, dirt, and damage from heavy machinery. At the same time, rents rose and vacancies dropped due to the destruction of affordable housing units, most of which were never replaced (Downs 1970, 202–208). The gentrification that followed redevelopment imposed additional upward pressure on rents, often initiating another round of displacement.

Some property owners may have profited from urban renewal. Even though that policy prevented owners from choosing when and at what price to sell, the redlining prevalent in those areas had had a similar effect. Specifically, urban renewal may have helped owners of vacant lots and empty houses find a buyer. Indeed, these owners may have welcomed the opportunity to stop paying taxes on unproductive property. Furthermore, those who bought properties cheap—from estates, at tax auction, or foreclosure sale—may have turned a tidy profit. In Newburgh, for example, one speculator purchased the building at 129 Water Street for $79.94 at tax auction in December 1960, well into the planning stage and less than a year before the Water Street renewal project went into execution. The following year, the city's appraiser valued this property at $4,000 (Newburgh Urban Renewal Agency, box 46 [administrative]). Finally, property and business owners in urban renewal rehabilitation areas were eligible for and may have benefited from grants and low-interest loans.

After passage of the Housing Act of 1968 and Uniform Relocation Act of 1970, some residential tenants and owners benefited economically (if not in other ways) from relocation. At least one black Newburgh homeowner credited urban renewal with enabling his family to move into what he regarded as a better home and neighborhood outside of the city.[5] In his case, the Housing Act of 1968 made this possible. Likewise, downpayment assistance included in the Uniform Relocation Act helped some tenants become first-time homeowners. Other tenants moved into objectively better housing. In Kingston, for example, a seventy-six-year-old World War I veteran was forced to move out of the house where he had lived his entire life. By the time Urban Renewal Agency staff visited him, he had been without electricity for fifteen years. They helped him apply for Veterans Administration housing (Kingston Urban Renewal Agency, box 33).

Loss of Intergenerational Wealth

Property, business, and income losses wrought by urban renewal projects can also be tracked into the future, manifesting as lost inheritance and economic opportunities for descendants. The largest source of intergenerational wealth loss is likely the result of property takings. This was a significant loss, because homeownership, despite racist terms and exclusions, has historically been the primary source of low-income and minority wealth accumulation (Herbert, McCue, and Sanchez-Moyano 2013;

4. Gilbert Sharpe Jr., interview by David Hochfelder, August 9, 2021.

5. Runston Lewis, interview by Ann Pfau and Stacy Kinlock Sewell, September 28, 2018.

Di 2007, 23). By linking households' relocation records with their property acquisition files, transitions in tenure and homeownership can be identified. The Asheville Urban Renewal Archival database links relocation records and acquisition files for those displaced by the East Riverside, East End/Valley Street, and Montford urban renewal projects. In East Riverside, the type of relocation housing is currently known for 646 of the 830 households displaced. Of these households, 240 were owner occupied. Sixteen percent of these homeowners became tenants or public housing residents as a result of urban renewal, losing the opportunity to pass down this generational wealth to their descendants (Housing Authority of the City of Asheville, box 56).

The information contained in acquisition files' appraisal reports can be used to estimate the present-day value of seized properties, had families been able to hold on to their real estate and sell these assets in contemporary markets. When homeownership was lost, such estimates speak to lost intergenerational wealth. Simply examining the prices set by appraisers and payments received by renewal area property owners does not provide a good indicator of the present-day value. But the property characteristics described in the appraisal reports—year built, square footage, number of bedrooms and bathrooms, and so on—can be harnessed to estimate the present-day value of these homes by examining the contemporary sale prices of similar properties in the locality.[6] Such estimates rest on assumptions about the condition of the home and the owners' ability to invest in the property over time. Of use here are also the assessments of the home's condition appraisers made at the time, noting whether the property was in poor, fair, or good condition and estimating the "future economic life" of the home in years, as well as the property photos these files contain. What follows are two examples of how archival records can be used to estimate loss of wealth over time.

Mary Butler was one of twenty-seven Southside homeowners who moved to public housing during the 1968–1971 East Riverside acquisitions (Housing Authority of the City of Asheville, box 56). Mary and her husband, Ben, bought their home at 78 Pine Grove in 1926, and, two decades later, the adjacent residence at 82 Pine Grove. In 1965, the Redevelopment Commission of the City of Asheville commissioned their first appraisal of the two properties. Four additional appraisal reports, a condemnation proceeding to cure the deed, and ten years later, the city finally settled with Mrs. Butler for $16,000. During this process, she not only endured the death of her husband and a child but also at least two moves, finally settling into senior housing not long before her death in 1976 at the age of eighty-eight (box 70).

How much might the Butlers' properties sold for today, had the family been able to hold onto these two residences? The 1965 appraisal report notes that 78 Pine Grove, where the Butlers lived, was in good condition (downgraded to fair in the subsequent appraisal reports), and one of the 1968 appraisals notes that the home had recently been updated with a new roof, new heating plant, and new aluminum siding and storm plus screen windows. The early appraisal reports note a "future economic life" of twenty-five to thirty years for the home, built in about 1920. The three-bedroom, one-bath home measured 994 to 1,044 square feet in size. 82 Pine Grove, which the Butlers had been renting out for $48 per month, was also a three-bedroom, one-bath home of similar size, at 990 to 1050 square feet. It was noted to be in fair condition and having a "future economic life" of twenty to thirty years (Housing Authority of the City of Asheville, box 70).

Recent sales of comparable property that survived urban renewal on the very same street can provide good estimates of what these properties would be worth today. In June 2021, 56 Pine Grove Avenue, a 1,120 square foot, two-bedroom, two-bath home built in 1920, sold for $335,000 or $299 per square foot. Another relevant property is 38 Pine Grove, which sold for $336,000 in November 2023 (Zillow 2023). Although this home was built in 2006, it has only

6. The present-day value of properties in areas that were subject to urban renewal have arguably been affected by the clearance and redevelopment that took place within these neighborhoods. Neighborhoods that were not subject to urban renewal can provide an alternative set of counterfactual estimates.

one bathroom but three bedrooms, like the Butler properties, and measures 1,590 square feet, with a price per square foot of $211. Using the midpoint for both the price per square foot ($255) and the acquired homes square footage (both at about 1,019 square feet), and assuming that the Butlers' properties could be sold today in similar condition to these comparison properties, we can estimate that their properties would have sold for about $260,000 each. Subtracting the $16,000 compensation payment, along with an estimate of compounded interest, as well as estimated upkeep and renovation costs from the $520,000 estimated total value of the two properties can give us a rough estimate of the intergenerational wealth lost by Mary and Ben Butler's descendants. Assuming $100,000 for renovation costs and $114,000 for the present-day value of the compensation payment (with interest compounded annually using average historical interest rates on treasury bills)[7] yields a lost wealth estimate of $306,000.

Arthur and Liler Madden, who lived three blocks up the street from the Butlers, were also displaced from their home by the East Riverside project. (Like Mary, Liler died soon after the move; she was only sixty-four years old.) The Maddens bought the lot at 10 Congress Street in 1945 and built their home in 1949. After conducting three appraisals between 1965 and 1968, the city acquired the property for $5,200 in October 1968. The Maddens received their equity of $2,245, with the remainder going to pay off their remaining mortgage and taxes. The Maddens remained in their property for a short term, renting it from the city for $15 per month, and then moved into public housing shortly before their home was demolished (Housing Authority of the City of Asheville, box 69). Using the same comparable sales for that of the Butler estimation suggests that the present-day value of the Maddens' property would be about $271,000. The Maddens' property was between 1,032 and 1,094 square feet, with two stories, four to six rooms, and one bath. The appraisal reports note it to be in fair condition, with a future economic life of twenty-five to thirty-five years (box 69). Assuming $100,000 in renovation costs and $23,900 for the present-day value of the compensation payment yields a lost wealth estimate of $147,100.

Of course, many families might have sold their properties at an earlier point in time between 1980 and 2023, when Asheville property values were much lower. However, because the gains from these sales could have been used to purchase new properties (perhaps as downpayment assistance for children, in Asheville or elsewhere), finance university degrees, or make other investments, estimating the present-day value would require making assumptions about how the proceeds from these sales would have been reinvested. Given the multiplicity of sale and investment trajectories each family could have taken had they not been forcibly displaced, using home values from contemporary real estate transactions to estimate present-day wealth loss may be the most straightforward approach, though certainly other estimation strategies are possible.

Future research should investigate the extent of homeownership loss in other cities and explore alternative strategies for estimating lost wealth. For example, following William Darity (2008) and Dania Francis and colleagues (2022), scholars could harness additional historical data on property values and compound interest to estimate a fuller picture of wealth loss beyond just the present-day value of seized properties. Darity (2008) takes such an approach to estimate the reparations owed to descendants of the enslaved based on the failed promise to provide forty acres of land to freed people following the Civil War. To estimate the value of black farmland lost in the U.S. South between 1920 and 1997 due to theft, fraud, discrimination, and forced partition sales, Francis and colleagues (2022) consider yearly changes in county-level land values and compound these values over time to 2020, assuming a rate of return of 6 percent per year on the land value plus an additional 5 percent annual return on the income from this agricultural land. Economists could apply a similar approach to both developed and undeveloped land seized during

7. We calculate present-day values of compensation payments using Measuring Worth's short-term asset Savings Growth function (see www.measuringworth.com).

urban renewal to estimate intergenerational wealth loss.

Land Transfers

In 1968, the U.S. Commission on Urban Problems (1969, 153) condemned urban renewal's failure to live up to its framers' intent of ensuring that even the poorest Americans were housed in "decent, safe, and sanitary" dwelling units. By the time of the commission's report, many local governments were instead treating the program as "a federally financed gimmick to provide relatively cheap land for a miscellany of profitable or prestigious enterprises." This critique prompts us to consider two types of subsidy: wealth transfers from displaced residents to a municipality's tax base along with wealth transfers to private developers in the form of write-downs of the cost of land acquisition and site improvement. The outcome, as intended by many of the officials who facilitated these discounted land sales, is that areas that once housed low-income residents and communities of color have become, over the past several decades, increasingly wealthy and white.

HUD reported that through mid-1971 it had paid urban renewal displacees a total of $92 million in moving expenses and relocation assistance. At the same time, the department asserted that the total assessed tax valuation of land in urban renewal project areas had increased by about $507 million (while the percentage of taxable, privately owned land to total land coverage had decreased from about three-quarters to less than half). The difference between increased tax valuation and compensation paid to relocatees, about $415 million, works out to about $305 per person displaced. This is consistent with economist Anthony Downs's estimate of $800 to $1,200 per household, which he regarded as a subsidy paid by the poor, the elderly, and people of color to build public goods like urban expressways, public buildings, civic centers, and sports and cultural venues used largely by affluent, white populations (HUD 1972, 60, 82; Downs 1970, 222–23).

As an economic policy, urban renewal was intended to encourage private development by providing construction firms with discounts on the price of urban land. For example, acquisition, demolition, and relocation costs totaled about $1,700,000 for Newburgh's Water Street project, but the cleared land was priced for resale at $47,410 (Newburgh Urban Renewal Agency, box 62 [administrative]). Likewise, in Asheville's East Riverside, Richard Marciano and colleagues (2022, 4) found that the city budgeted $7.4 million for property acquisition, yet projected revenue from resale was just $1.1 million. The city ultimately expended $6.4 million and generated $3.3 million in revenue but only because it took five decades to dispose of the cleared parcels.

Although building on urban renewal land could be profitable, it was also risky. Developers could acquire disposition parcels for a 3 percent cash investment, thanks to this land write-down and Federal Housing Authority loan programs (Berman 1969). However, many acres of cleared urban renewal land lay vacant for years, particularly as construction and borrowing costs increased in the late 1960s and 1970s. It was not until the 1980s, for example, that new houses were built on the land where Mary and Ben Butler's home once stood (Remapping Southside Community Remapping Tool, n.d.; Zillow 2023). After 1970, developers increasingly demanded additional financial incentives, particularly tax abatements. Because city officials refused to grant those demands, several redevelopers declined to build on renewal land in Newburgh (Newburgh Urban Renewal Agency, box 62 [administrative]; Pfau and Sewell 2020, 151–56). More effective, in the long run, was Newburgh's decision (under pressure from local preservationists) to acquire architecturally significant houses whose owners were unable to afford the mandated rehabilitation-area repairs. In the mid-1970s, the city sold these buildings at a discount to white rehabbers from outside the city. A historic marker in the former renewal area celebrates the work of these early preservationists. In Asheville and Kingston, white artists soon began moving into buildings just outside the East Riverside and Broadway East project boundaries.

The sight of historic structures demolished for urban renewal sparked a national upswell of preservationist sentiment and of private investment in architectural restoration. With the

end of urban renewal funding, political leaders in Newburgh, Kingston, and Asheville started to see historic buildings, if not the people living in them, as an opportunity to attract wealthier, whiter shoppers and residents. This shift entailed the creation of new plans, historic districts, zoning regulations, and architectural review boards for the areas adjacent to renewal-cleared land. It also led to additional rounds of displacement (Weiler 1979). One study found that many households displaced for market-based revitalization were "the same families who . . . were former displacees from the urban renewal areas" (Sumka and Cicin-Sain 1978).

In an article for *Ebony* titled "How Whites Are Taking Back Black Neighborhoods," civil rights activist and property developer Dempsey Travis (1978) called on communities to organize against this encroachment. Otherwise, he warned, they risked losing "the hard-won political gains of the past 30 years, and a new relegation to second-class citizenship." Six years earlier, Newburgh community leaders called out the same phenomenon in a contentious public meeting designed to build support for a third renewal project in the same black neighborhood. They accused an outside property developer and his local supporters of trying to push black residents out of Newburgh's historic waterfront district, thereby transforming it into a majority-white space. Richie Peterson of the NAACP confronted the developer. "What you are destroying is a black community, a culture, a political base and a way of life," he said. "You are destroying our self respect, our unity. This is our waterfront. When the downtown wasn't important, we couldn't get help. Who will own and control the area?" (Pfau and Sewell 2020, 156). As Travis's and Peterson's comments make clear, the losses attendant to urban renewal were not wholly monetary. Displacement and dispersion threatened community, culture, self-respect, and political cohesion, all symptoms of what psychiatrist Mindy Fullilove (2004) has diagnosed as "root shock"—a reaction to trauma that can affect individuals and communities over generations.

A corporate reorganization and the end of the federal urban renewal program forestalled the takeover of Newburgh's waterfront—but not for long. Over the past several decades, residents of and visitors to this area, as well as what's left of Asheville's riverside and Kingston's Rondout neighborhoods, have become increasingly wealthy and white. Although urban renewal did not by itself cause these transformations, it set the stage for later gentrification, as activists correctly anticipated.

REPAIRING THE DAMAGES

Where available, archival records should inform deliberations about the shape and scope of local reparations initiatives. Asheville's Community Reparations Resolution states that the city will make "amends for carrying out an urban renewal program that destroyed multiple, successful black communities" (City of Asheville 2020b). Compiling a comprehensive list of those displaced and the properties seized is a first step toward understanding the harm done and developing policies to repair those losses. The Asheville Urban Renewal Archival database provides such a list. The Asheville Buncombe Community Land Trust, which is dedicated to building black homeownership, will use the database to prioritize applications from displaced families. Asheville has used the same database to verify which city-owned properties were acquired during urban renewal and to create a GIS Storymap (City of Asheville 2021). The city council has placed a moratorium on the sale of city-owned land acquired via urban renewal (including Choctaw Park, site of Arthur and Lilier Madden's former home) until the Community Reparations Commission makes formal recommendations regarding use of this land (City of Asheville 2020a). The work of the commission is ongoing, but their recommendations may include repurposing or selling this land in order to facilitate or fund reparative policies or programs.

As policymakers attempt to repair the damages wrought by urban renewal, they should consider harms beyond property and income losses. These include

- degraded social capital—frayed community relationships and networks that contribute to economic livelihoods by facilitating employment opportunities,

contributing to childcare, and acting as informal insurance in times of economic shocks;

- diluted political capital—undermining of relationships and networks that contribute to a community's ability to organize, advocate for themselves, and increase their political and economic power; and
- weakened human capital—damages to physical and mental health, overall well-being, and children's education.

In Asheville, the commission has crafted recommendations focusing on five impact focal areas: criminal justice, economic development, education, health & wellness, and housing.

Public history projects, particularly those that involve displacees and their descendants, play a key role in exposing injustices, building support for reparative policies, and making the case for repairing the nonfinancial damages that Fullilove uncovered. The Newburgh Oral History Project is one example of how descendants, historians, and local officials are working to expose the inequities of urban renewal. Funded by the National Park Service, this collaboration is designed to improve public understanding of urban renewal in Newburgh; reinterpret the East End Historic District in the context of the Great Migration, civil rights activism, and urban renewal; and develop a new social studies curriculum. This work fulfills a need cited in Newburgh's 2021 Housing Policy Framework, which emphasizes coming to terms with past racist policies and their present-day consequences (Dwarka 2021). In Asheville, a group led by Priscilla Ndiaye Robinson, whose family was displaced by the East Riverside project, has helped build public awareness about Asheville's urban renewal history through creation of the Urban Renewal Impact website and an interactive East Riverside map (Marciano et al. 2022).[8]

These local efforts—public and private, academic and community based—help set the stage for the creation of national policy. Likewise, local archival collections combined with national statistics will enable researchers to estimate the full extent of the financial losses imposed on displacees along with the transfers of income and wealth from them to other groups. In other words, local records are key to setting a national reparations agenda by helping us put a price on Renewal Era losses.

Between 1949 and 1974, the federal government funded 2,100 urban renewal projects, investing more than $13 billion in 1,200 communities across the United States. Total public spending at all levels, federal combined with local and state matches, totaled some $20 billion (HUD 1974, 38). Because urban renewal was a federal policy funded by federal grants, repairing these damages is a national obligation. That, of course, does not absolve municipal governments of responsibility. Municipalities applied for federal funding to create and implement urban renewal plans. Many still own and conduct business on land seized for urban renewal. In recognition of this culpability, an increasing number of municipalities have established reparations commissions.[9] Should Congress enact a federal reparations policy, these commissions might serve as a mechanism for distributing payments and other benefits.

A NATIONAL RESEARCH AGENDA

In support of a national policy, researchers will need to investigate the use of additional archival collections to calculate the scope and scale of losses imposed on displacees. They should also explore methods for valuing the nonmarket damages wrought in the domains of social and human capital, drawing on non-market valuation techniques from environmental and health economics. In their accounting of the costs of slavery and discrimination to African American descendants of the enslaved, Thomas Craemer and colleagues (2020) estimate the economic damages of lost freedom for the enslaved and note that further work is required to estimate the damages from lost opportunities

8. Urban Renewal Impact, https://urbanrenewalimpact.org (accessed June 25, 2023).

9. For more on local reparations initiatives, see Reneau 2024; Newton and Nelsen 2024; Davies, Jackson, and Knight 2024.

and pain and suffering. So too in the case of urban renewal, researchers should investigate how to quantify the pain and suffering of forcible displacement and the damages of degraded social networks and loss of mixed-income communities. In assessing non-market damages, we should also pay particular attention to how the intersection of urban renewal and highway construction has caused black and brown communities to suffer higher exposure to particulate matter and other pollutants (Lane et al. 2022) and the quantification of health damages from this disparate exposure.

More research and reflection on what urban renewal effectively subsidized is also needed. What did the destruction of these neighborhoods enable cities and the people who live there to do? Did it help increase economic growth, tax revenues, or property values? If so, who benefits from this economic activity—the descendants of those who were forcibly displaced or wealthier, whiter communities? Future research could attempt to quantify these subsidy values, though causal identification will pose challenges.

From the standpoint of historical research, three major challenges remain. This article covers only three of the 1,200 places with federally funded urban renewal projects. We estimate that about a third to a half of municipalities have retained their records (Hochfelder 2022, 2023). Thus the first major challenge is to locate these records, facilitate their preservation, and make them accessible to researchers and the broader public.

A second priority is to describe and quantify forcible displacement resulting from other federal programs, particularly the interstate highway network. Not surprisingly, between 1956 and 1971, around 75 to 80 percent of the roughly 340,000 households displaced for the interstates were urban, a group that was disproportionately poor and nonwhite (Jette 2021; Highway Research Board 1970, 1–2). When expressways were built in connection with urban renewal, the relevant acquisition and relocation files can be found among municipal records. In other cases, researchers will have to search municipal, county, state, and federal repositories or contact state and local departments of transportation in order to document forcible displacement for highway construction (Spatz 2010). Community displacement also resulted from other federally funded projects, such as dams built by the Army Corps of Engineers for flood control, hydroelectric power, and municipal water supplies (Reinhardt, n.d.).

Finally, following the lead of Giuliana Perrone elsewhere in this issue, we believe that scholarly research can and should help cure historical amnesia. Historians have the duty to remind citizens and legislators that by the time the Uniform Relocation Act was voted into law, members of Congress agreed both that forcible displacement was harmful and that displacees deserved substantial cash assistance. On the House floor, Rep. Andrew Jacobs (D-IN) described the act as "nothing more than a simple act of justice." Rep. Jeffery Cohelan (D-CA) concurred, characterizing these public improvement programs as presenting a "tragic paradox." He continued, "We want to improve the lives and surroundings of our people and so we push ahead with urban renewal, mass transit, and highways; yet many of those who need to benefit most from these programs actually suffer the most." In the Senate, John Sherman Cooper (R-KY) asserted, "Providing just compensation and equitable assistance to those who are displaced, so that their lives are not unduly disrupted by public projects and they are kept 'whole' . . . is right and necessary." The act, along with the debate that preceded it, was both an acknowledgment of past harm and an effort to fix unjust policies. What it failed to do was repair the damage already done (*Legislative History* 1971).

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Rehearsals for Reparations

GIULIANA PERRONE

This article considers a subset of lawsuits in which emancipated people sued to have their enslavers' bequests to them honored. It contends that we should see these suits as contests over reparations. By exploring this unappreciated history, this article argues that enslavers themselves believed reparations were due and were willing to pay them, that there was a general agreement between enslaved and enslaver about the form reparations should take, and that there was a similar understanding that reparations should be generational. The article further suggests the promise of additional inquiry into historical testamentary records. Such a novel archive would add to contemporary arguments in favor of reparations by identifying an unacknowledged effort to provide compensation to formerly enslaved people.

Keywords: freedpeople, citizenship, bequest, justice, willingness to pay

On June 13, 1864, Holiday Hayley of Northampton County, North Carolina, died. In his 1857 will, he provided for the manumission of some of his enslaved people and bequeathed "half of the tract of land I now live on to them and their heirs forever, including the buildings," and "the sum of seven hundred dollars."[1] When the persons who were named in the will—Alfred, Octavius, Jackson, Louisa, and Paul—requested their legacies from the estate's executor William Hayley, he refused to grant them. As Holiday's next of kin, William sought to keep the estate intact for the benefit of the late man's White relatives. The petitioners were not "persons *in esse*," the younger Hayley insisted, meaning they did not exist as legal persons (see figure 1).

Despite William Hayley's entreaties, the North Carolina Supreme Court decided the case in 1867 in favor of the Black legatees. According to Chief Justice Richmond Pearson, "the paramount intention to make ample pro-

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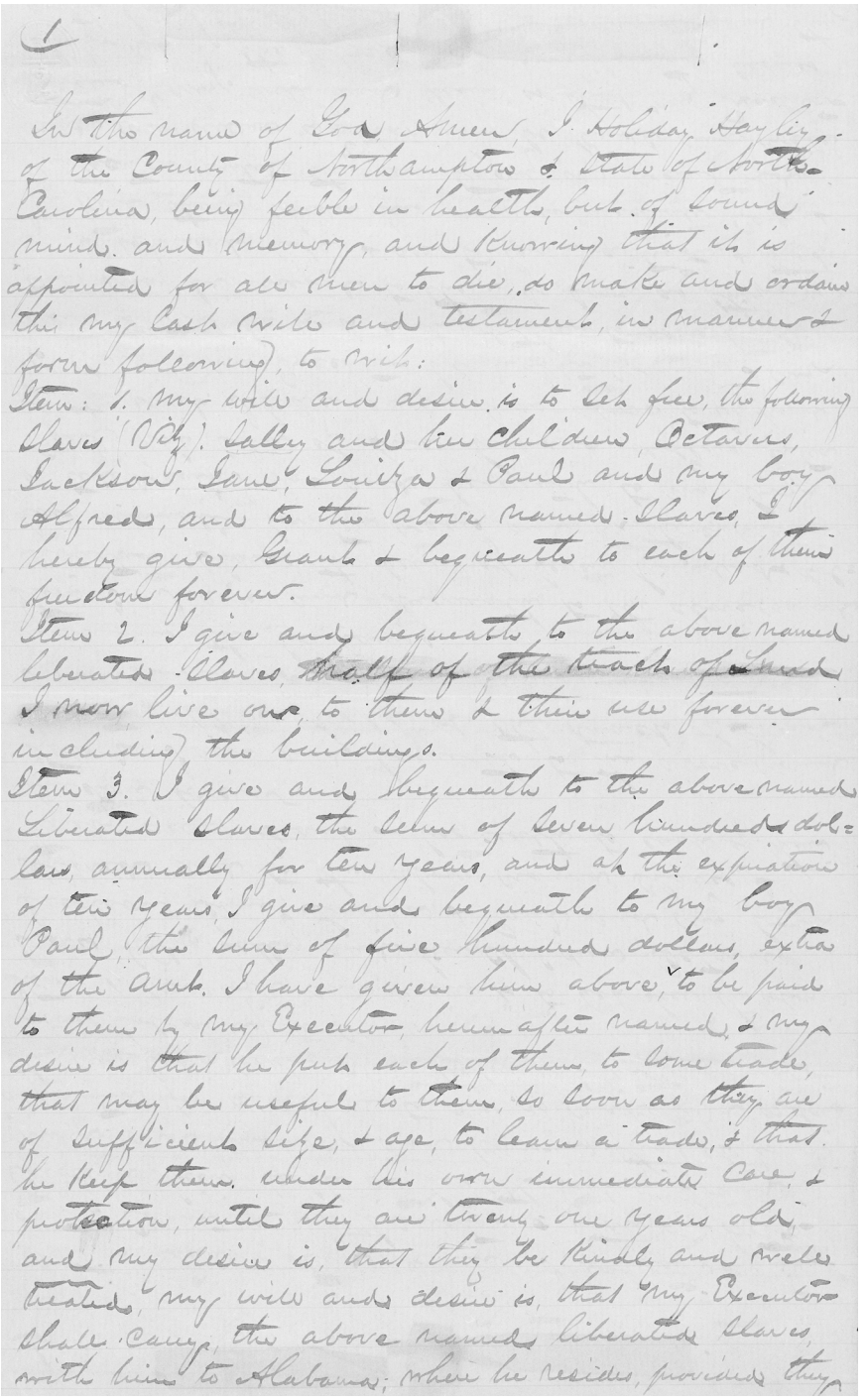
1. *Hayley v. Hayley,* 62 N.C. 180 (1867).

Figure 1. Holiday Hayley's Will



In the name of God Amen I Holiday Hayley of the County of Northampton & State of North Carolina, being feeble in health, but of sound mind and memory, and knowing that it is appointed for all men to die, do make and ordain this my last will and testament, in manner & form following, to wit:

Item: 1. My will and desire is to set free, the following slaves (viz): Sally and her children, Octavus, Jackson, Jane, Louiza & Paul and my boy Alfred, and to the above named Slaves I hereby give, Grant & bequeath to each of them freedom forever.

Item 2. I give and bequeath to the above named liberated Slaves, Half of the tract of land I now live on to them & their use forever including the buildings.

Item 3. I give and bequeath to the above named Liberated Slaves, the sum of seven hundred dollars annually for ten years, and at the expiration of ten years I give and bequeath to my boy Paul, the sum of five hundred dollars, extra of the amt. I have given him above, to be paid to them by my Executor hereinafter named & my desire is that he puts each of them to some trade, that may be useful to them, so soon as they are of sufficient size & age, to learn a trade, & that he keep them under his own immediate Care & protection, until they are twenty one years old, and my desire is, that they be kindly and well treated, my will and desire is, that my Executor shall Carry the above named liberated Slaves with him to Alabama, where he resides, provided they

Source: "North Carolina, State Supreme Court Case Files, 1800–1909," n.d.

vision for these slaves if liberated, no matter how, and to give them a fair start in the world, is clear." For the majority of the court, the intent of Holiday Hayley was of greater importance than any technical legal argument the administrator could make, for there was "nothing to show that the legacies were at all to depend on the manner in which their emancipation was effected."[2] With the end of slavery, no barrier existed that prevented the bequests from being dispersed to the freedpeople.

Hayley v. Hayley is just one in a collection of lawsuits in which Black Americans successfully sued the families of their former enslavers for a variety of things, including land, money, or even control of entire estates—whatever they knew had been promised to them. Traditionally, historians have discussed the bequests from enslavers to enslaved as an extension of paternalism; such largesse demonstrated a gentleman's skilled mastery. After all, only those who could afford to part with valuable human property would do so. To be sure, the paternalism inherent to antebellum slavery was certainly at play, but it does not alone explain enslavers' actions.

This article contends that we should think about cases like *Hayley* differently: as early iterations of reparations in which enslavers themselves made the case for restitution.[3] Of course, neither enslavers nor freedpeople conceived of reparations according to present-day standards. Nevertheless, archival material contains important elements of reparations discourse that mirror current debates. By building on and qualifying legal scholar Alfred Brophy's definition of reparations as "*programs that are justified on the basis of past harm and that are also designed to assess and correct that harm and/or improve the lives of victims into the future*," those common features become visible (Brophy 2006, 9, emphasis in the original). Even though testamentary forms of reparations were not programmatic in the conventional sense—they were not responding to any policy, statute, or concerted public pressure—there was nevertheless a steady tradition of providing them and an indication that some testators acted out of a sense of moral duty to provide for the bondspeople they predeceased. Some enslavers, in other words, expressed a willingness to pay at least a partial debt for slavery, even at the expense of other White heirs. More important, those who received this form of restitution, like Alfred, Octavius, Jackson, Louisa, and Paul Hayley, almost certainly lived materially better lives as a consequence of their inheritance than they would have without, and, because their fortune could be passed down to future generations, so would their descendants.[4]

Specifically, this article examines a subset of nineteen appellate cases from eight former slave states that were decided in the years immediately following the Civil War, from 1866 through 1874.[5] On the surface, these suits may appear exceptional. For one, we do not know exactly how many enslavers provided for manumission and other bequests in their wills. We do know, though, that it was enough to garner attention from state legislatures, given that statutes limiting the practice became prevalent in slave states. For another, most Black Americans, enslaved or freed, did not have the resources required to bring suit, let alone appeal to the highest courts in their states. But many more disputes over bequests were decided by

2. *Hayley v. Hayley*, 182–83.

3. Some activists construe cases like these as examples of reparations, but I have not found scholarship that treats them in this way. Brittni Chicuata, director of economic rights at the San Francisco Human Rights Commission, recently spoke about ex-slaves suing enslavers as reparatory (*Panel: Reparations Now!* 2023).

4. Probate records indicate that Alfred Hayley retained real property in Northampton County at the time of his death in 1887 and that he wrote a will leaving his estate to his wife Ella. It is unclear whether this was the property bequeathed to him by his father or whether other members of the family remained in possession of any real estate (Wills and Estate Papers, Northampton County, North Carolina, 1663–1978).

5. The cases come from the author's database of suits related to slavery that were decided in appellate courts after the ratification of the 13th Amendment. I define former slave states as any state in which slavery was legal at the outbreak of the Civil War.

lower courts, settled out of court altogether, or were decided prior to emancipation. The wills that were carried out according to their terms produced no legal conflict at all. Crucially, however, the very existence of these suits identifies an understudied phenomenon: even when the support for and practice of slavery was at its peak, some enslavers sought to provide recompense for bondspeople through their last wills and testaments.

Indeed, the findings of this study suggest that a deeper exploration of testamentary records should be pursued. That lesson derives in part from the unique circumstances of the Reconstruction era. Free from enslavement, Black Americans could more easily demand the transfer of promised resources from the estates of White former enslavers to their newly established households. In so doing, they exposed important, if nascent, conversations about redress for slavery and helped give the wills reparatory meaning. Black Americans marshaled their collective knowledge of the American legal system, exercised their new legal rights, and fought against recalcitrant White southerners to demand what was owed to them (on enslaved people's legal knowledge, see Edwards 2009; Kennington 2017; Morris 1996; Penningroth 2003; Schweninger 2018; Twitty 2016; Welch 2018). More often than not, freedpeople won their suits. In victory, they acquired their proverbial (and similarly promised) forty acres not from the federal government, but from the enslavers who once owned them.[6]

The collection of cases reviewed here also identifies a set of mutually agreed-upon forms of reparations that were generational in their intent. One of the biggest controversies among proponents of reparations today has been what form they should take. In the nineteenth century, however, there was agreement between testators and Black Americans about what reparations should be, all of which considered the future needs and enrichment of freed individuals. Across the cases in this sample, we see, in addition to manumission, the same four provisions made: land, money, transportation costs for those who had to relocate, and education. Indeed, access to wealth, property, and educational opportunities were central to the demands of freedpeople during Reconstruction (land and education especially). They have remained core elements of calls for reparations ever since.

By expanding the rubric of what we consider to be reparations, this article begins an exploration into how enslavers framed their choices to provide restitution and how some formerly enslaved people sought and received it. It further exposes an unappreciated site of negotiations for reparations between enslavers and Black Americans they once claimed as property. This not only pushes the chronology of reparations into a deeper past, it also uncovers voices not traditionally credited in these conversations.[7] This study considers how these episodes align with present-day efforts to secure reparations and ultimately illustrates why this type of historical exploration is vital. Taken together, these cases speak directly to what forms reparations should take and to whom they should be provided. They make a potent but unexpected case for reparations for slavery made by those who participated directly in the institution. In so doing, they provide essential context for ongoing claims for reparative justice.

TESTAMENTARY PRACTICE IN THE ANTEBELLUM ERA

Throughout the antebellum decades, the wills of slaveholders regularly included provisions for manumission. Some testators confessed their ambivalence about slavery, revealing discomfort with the institution's foundational premise that a human being could be defined as property. For some, religious belief provoked this apprehension. In 1791, for instance, well-known Virginia planter and Baptist convert

6. Section 4 of the Freedmen's Bureau Act codified General Sherman's Special Field Order 15 (the origin of the forty acres and a mule promise) by permitting the lease of forty-acre plots of land in the former Confederacy to freedpeople (Brooks 2004, 6).

7. Scholars have cited a lawsuit from 1916 (*Johnson v. McAdoo*) as the first reparations case heard in federal court, even though they acknowledge that other efforts to seek restitution through litigation occurred as early as the eighteenth century in local jurisdictions (Tillet 2012, 141; Brooks 2004, 4–9).

Robert Carter III initiated the emancipation of more than five hundred enslaved people that he had inherited. Complicated by Virginia's regulation of manumission, the process of liberating them dragged on well into the 1800s (Barden 2021).

Those who lived through the revolutionary and early republican eras struggled to reconcile newly articulated notions of liberty, equality, and happiness with the subjugation, rightlessness, and abjection of slavery. Freedom, in this articulation, was a natural right, which rendered slavery incompatible with the ideals on which the new nation had been established.[8] Of the so-called founding fathers, however, few actually manumitted their enslaved people. Among those who did were Benjamin Franklin, John Jay, Alexander Hamilton, and George Washington (Sinha 2016, 41). Of particular note, Washington's will stipulated that his bondspeople should be freed after the death of his wife Martha, provided funds for the support of those who were elderly, and required the apprenticeship of children without parents, or without parents who could pay for their education, until they reached the age of twenty five (Washington 1799). Abolitionists, including Black minister Richard Allen, construed Washington's wishes as proof of the president's wish to see the end of slavery. That mythology has persisted. But, as Manisha Sinha has written, "Allen sought to appropriate Washington's legacy for abolition" and to inspire others to follow suit; he did not consider the act in any broader context or identify apprenticeship as another form of bondage (Sinha 2016, 149). Although Washington's will did not include such language, wills written in the three decades following the Revolution regularly justified manumission by appealing to natural rights and the "rhetoric of the republic" promoted during the era (Schweninger 2018, 81). Even after the Civil War, judges remarked that such bequests regularly arose "from strong motives and earnest feelings of justice."[9]

Often, enslavers who used their wills to manumit followed Washington's lead; they did not frame their decisions in this high-minded language. They might single out individual bondspeople for freedom, perhaps as a reward for faithful service, but did not necessarily manumit all the people they owned. For this reason, scholars regularly see such acts as evidence of paternalism—the benevolence of a social and racial superior toward an inferior that shored up his reputation and honor within the larger slaveholding society (Genovese 1976; Wyatt-Brown 1982; Patterson 1982, chap. 8). Conventional depictions of manumission as paternalistic evoke the parasitic, mutually dependent relationship between master and slave described by Orlando Patterson and others, whereby the enslaver depends on the ownership of and ability to liberate bondspeople to establish reputation, standing, and social power (Patterson 1982, chap. 12; Hegel 1977; for discussions of mutual dependence in antebellum southern slavery, see Gross 2006; Johnson 2001). Complete mastery, that is, depended on the ability to enslave and liberate. In this rendering, manumission can be understood as an integral phase of slavery, not necessarily as its opposite.[10]

Testamentary manumission communicated other aspects of an individual testator's reputation. As legal historian Ariela Gross (2006, 48) reminds us, "appearances were what mattered" in southern slave societies, and notions of honor and proper mastery were essential to establishing one's reputation and making one's character publicly visible to the broader community. Even in death, that reputation counted, especially if it could be mobilized by future

8. This idea formed the basis for the infamous ruling in *Somerset v. Stewart* 98 ER 499 (1772), and for the suits that led to the end of slavery in Massachusetts (see *Brom and Bett v. Ashley* (1781) and the so-called Quok Walker Cases (1781–83) *Jennison v. Caldwell*, *Quok Walker v. Jennison*, and *Commonwealth v. Jamison*; see also Sinha 2016, 68–69).

9. *Armstrong v. Pearre* 47 Tenn. 171 (1869), 179.

10. Crucially, Patterson views manumission as an element of slavery. "Enslavement, slavery, and manumission are . . . one and the same process in different phases" (Patterson 1982, 296; see also Davis 1984, 17; on the post-emancipation connection between reparations and paternalism, see Araujo 2017, 96).

generations of legitimate heirs as an intangible legacy of social capital. Testamentary manumission, then, may very well have bolstered one's social standing by demonstrating financial capacity to part with valuable human property, gracious benevolence, and perhaps even the chivalry of a true gentleman to care for his social inferiors. But it could also have revealed the inverse by exposing taboo, especially if the persons to be manumitted were the illegitimate offspring of the testator. As a minority of the cases examined here demonstrate, some enslavers sought to free the children they had with enslaved women. The persons who sued for Holiday Hayley's estate, for instance, claimed they were "begotten upon the bodies of his female slaves . . . that said testator never named."[11] Although fathering children with enslaved women was common, liberating them violated the socioracial order of the antebellum South by imbuing them with legal standing (Davis 1999). Specifically, such an action removed them from under the legal and social proscriptions of slavery, leaving them entitled perhaps not to complete legitimacy or social equality, but to personhood and the rights pertaining to it—including the ability to inherit a White man's estate, should it be bequeathed to them.[12]

Still, in choosing to manumit, enslavers admitted that they believed at least some of their bondspeople should enjoy the rights of freedom and, potentially, ought to have the chance to live a decent life. The choice was all the more notable when those freed were young and would have been worth a great deal at sale, signaling that enslavers could not only appreciate, but value humanity over profit (on the value of enslaved people by life stage, see Berry 2017). In theory, manumission absolved the dishonor of enslavement (though perhaps not race), by recognizing and correcting its artificial suspension during the period of bondage (on slavery as artificially rendering rights dormant or suspended during the period of enslavement, see Perrone 2019; on dishonor as a constituent element of slavery, see Patterson 1982, 10–11). As scholars have shown, the enslaved "*themselves* understood . . . interactions with whites in terms of honor and dishonor," and understood that as bondspeople, they lacked these crucial attributes of freedom (Gross 2006, 51). Manumission and provision, then, could serve as a way to enrich the reputation of the enslaver, but it also dignified the humanity of those formerly enslaved. It should itself be understood as a form of reparation—repayment of what journalist Christopher Hitchens (2003, 172) has called a "debt of honor."

Testamentary manumission can also be understood as an aspect of the complex relationships that sometimes formed between enslaver and enslaved (see Genovese 1976; Berlin 2000). Absolute dominion was always more myth than reality; after all, enslavers depended on the human capacity of enslaved people to perform complex labor, and they knew that brute force alone would not always ensure cooperation or compliance (on the significance of enslaved humanity and the problematic construction of slavery as dehumanizing, see Johnson 2018). More important, the institutional structure of slavery never prevented personal relationships from forming, as complicated and complex as they may have been. This helps explain many of the so-called customary rights enslaved people expected their enslavers to recognize, but also the mutual affection sometimes expressed by enslaved and enslavers alike.[13] Bequests became one way to manifest that affection. Similarly, the promise of freedom could be used advantageously. As historian Loren Schweninger

11. *Hayley v. Hayley*.

12. Most of the suits being considered here involve the wills of White men. This accounts for the gendered language I use. I do not, however, wish to imply that White women did not participate fully in slavery, as mistresses or enslavers in their own right; instead, they simply do not appear frequently in the records I have found (on women enslavers, see Jones-Rogers 2019).

13. The customary rights of slaves often included having garden plots, selling wares, time to see loved ones on other plantations, and so on. Such incentives were negotiated between enslaved and enslaver. I use the phrase mutual affection to grant that enslaved people were complex people who possessed a full range of human emo-

concludes, "most slaves were aware of their owners' intentions to set them free. Indeed, it behooved the master class to reveal such intent to their human chattel so as to ensure their loyalty and good behavior." Though some enslavers feared the promise of freedom might have the opposite effect, it remains the case that bondspeople often "sensed the inclinations of the masters they daily served" (Schweninger 2018, 74). Some planters got around this worry by stipulating that any provision made for enslaved people would be forfeited by any "malconduct."[14]

Black people's knowledge of their enslavers' intent produced clashes with the executors of estates—usually other heirs—when bequests were not honored. Throughout the antebellum period, enslaved people able to obtain counsel (a major hurdle) sued for freedom based on the knowledge that their enslaver had provided for their freedom in a will. They quickly discovered, however, that litigation did not guarantee success. For instance, estates in debt sometimes required the sale of enslaved property to cover liabilities; other heirs or administrators might change the terms of deeds of manumission or refuse to file them appropriately; in some instances (in Louisiana especially), wills could be nuncupative (oral) and easily disputed; and, because enslaved people could not testify, trials relied on supportive White people to speak on their behalf. Typically, success in these types of suits depended on the ability to produce written records, ideally certified copies of wills or deeds (Schweninger 2018, 87–89). Enslaved litigants risked a great deal by going to court because reprisals surely awaited those who lost.

A common feature of wills further complicated matters. Many required the named legatees to relocate, either to a free state or to Liberia, often with the assistance of the American Colonization Society. For example, Georgia planter Augustus H. Anderson stipulated, "I desire and direct that my executors cause to be removed to a free State and there emancipated, John, son of my negro woman slave, Louisa; that they pay the expenses for such removal and for the reasonable support and schooling of said John."[15] Jesse Alsop of Mississippi stipulated that his plantation should be sold and the proceeds used to purchase property in Ohio for the benefit of the enslaved people he freed.[16] These stipulations responded to the state laws that required the relocation of persons manumitted by will, which were designed to prevent a free Black population from forming or growing within state lines, and to discourage the formation of racially heterodox families by precluding enslavers from liberating the women with whom they had sexual relationships (Bardaglio 1995, 57). This type of regulation became more common and more strict as southerners perceived an increasing threat of internal rebellion.[17] Some statutes went so far as to permit the seizure and sale back into slavery of any manumitted person who was not transported out of state (Sinha 2016, 94). Despite

tions, and to suggest that even within the violence and subjugation of slavery, enslaved and enslavers could and did have meaningful relationships (see Johnson 2003; Stevenson 2013).

14. *Estill v. Deckerd*, 63 Tenn. 497 (1874).

15. *Green v. Anderson*, 38 Ga. 655 (1869).

16. *Berry v. Alsop*, 45 Miss. 1 (1871).

17. Alabama, Kentucky, North Carolina, Tennessee, and Virginia all came to require relocation as a condition of testamentary manumission (Morris 1996, 372, 380). On laws restricting manumission, see Klebaner 1955, 443: "Louisiana and Mississippi enacted a blanket ban on further manumissions in 1857, followed by Arkansas (1859), Alabama (1860), and Maryland (1860). At a much earlier date, a slave could be freed only by special act of the legislature in Georgia (1801–1865), Alabama (1805–1834), Mississippi (1805–1865), and South Carolina (1820–1865); the laws of Alabama and Mississippi specified that the owner had to cite some meritorious service by the slave as the ground for his petition. The latter qualification was the sole ground for freeing a slave in Virginia (1723–1782); the governor and council passed on such cases. North Carolina (1715–1741; 1777–1831) had also limited emancipation to cases of meritorious conduct, but left the county courts to pass on them." Such laws might have overridden testamentary manumission (Jones 2009, 16–17).

these restrictions, which functionally increased the cost of manumission, enslavers nevertheless continued to use their wills to liberate and compensate their former property.

A WILLINGNESS TO PAY

Despite the proscriptions meant to stymie testamentary manumission, testators were explicit in their desire to provide payment for their enslaved people's service and often justified their actions as an obligation to provide recompense. North Carolinian James Whedbee, for instance, provided for the freedom and compensation for every one of the people he claimed as property. He established a fund "to be divided among them having due regard to merit, old age, and infirmity," that would be paid to them after they had "reach[ed] their place of destination." Making further provision and speaking to his purpose for manumission, Whedbee directed that a guardian be appointed "who [would] be certain to do them *justice*" by "managing their fund in a provident, wise and safe manner." "And" the will continued, "I especially desire the American Colonization Society to have an eye to this bequest so that my negroes may in no wise be defrauded out of the bounty intended for them."[18] Despite the continued claim over the enslaved persons ("*my* negroes"), Whedbee nevertheless went to great lengths to ensure that his exact wishes were carried out, perhaps anticipating attempts to prevent the payment of the bequests. More important, he conveyed a willingness to pay and a sense of moral responsibility to manumit and provide for the persons he named in his will.

Typically, willingness to pay is a concept used to determine prices that customers will pay for commodities or services. This may capture one aspect of what we find in the wills of some enslavers—compensation for labor faithfully performed. But provisions in wills like James Whedbee's also suggest that at least some acted out of a concern for the "justice" of the enslaved, and that their "merit" warranted the concern and the compensation. Judges specifically recognized testators' desire to provide remuneration—their willingness to pay—regardless of what informed it. An assessment of the wills included in this study reveals that enslavers were willing to bequeath four key things: property, money, education, and when needed, costs for transport to free territories (see table 1).

Embedded in every will was a calculation—a valuation—of what a testator believed an enslaved person should receive on the enslaver's demise. The precise terms of wills indicates that some enslavers left a great deal to their bondspeople, far more than mere trinkets or tokens of appreciation. They were, in short, willing to pay a lot. To recall, Holiday Hayley's 1857 will bequeathed "half the tract I now live on, to them and to their heirs forever, including buildings." In addition, it directed the estate's administrator to pay the "liberated slaves the sum of seven hundred dollars annually for ten years."[19] Kentucky woman Lucy Fine directed her brother to take her bondspeople to Cincinnati, Ohio, or another free state and liberate them there. "She also made some specific bequest to each of them, and directed her residence to be sold, and its proceeds to be divided among them or their descendants."[20] Jesse Alsop liquidated his entire estate for the benefit of the Black persons named, "as it is the great desire of my heart."[21]

Direct ownership of a person need not have been a prerequisite for a bequest. For example, Louisiana resident William Porter provided for an enslaved boy he did not personally own. His will instructed his executors to "purchase . . . a certain child, the son of a girl they call Meme." The will further directed that the boy, named Victorin, should be manumitted, educated, and

18. *Whedbee v. Shannonhouse*, 62 N.C. 283 (1868). Emphasis added.

19. *Hayley v. Hayley*.

20. *Monohon v. Caroline*, 65 Ky. 410 (1867): "to the slaves herein and hereby emancipated my executors shall pay all the money realized by the sale of the house and lot in which I reside, share and share alike; and if any of said negroes die before said division, his or her share is to be equally divided amongst the survivors."

21. *Berry v. Alsop*, 45 Miss. 1 (1871).

Table 1. Specifications of Enslavers' Wills

Case	State	Year	Provision 1	Provision 2	Value	Value Today	Provision 3	Provision 4	Generational Intent	All Emancipated	Related
Berry v. Hamilton	KY	1866	transport	money	$100 each	$1,971.17			no		no
Parish v. Hill	KY	1866	transport	money	$200 each	$3,942.34			no	yes	no
Hayley v. Hayley	NC	1867		money	$700 each	$14,808.51		property	yes		yes
Monohon v. Caroline	KY	1867	transport	money					yes		no
Whedbee v. Shannon-house	NC	1868	transport	money					no	all but three	no
Porter v. Brown	LA	1869		money	$1,000.00	$22,964.65	education		no	no	possibly
Green v. Anderson	GA	1869	transport	money			education		no		no
Milly v. Harrison	TN	1869	transport	money					yes	yes	no
Armstrong v. Pearre	TN	1869		money	$3,107.43 (wages)	$71,361.04			no	no	no
Todd v. Trott	NC	1870	transport	money	$800.00	$19,185.01			no	yes	no
Berry v. Alsop	MS	1871						property	yes		
Matthews v. Springer	MS	1871		money					no		yes
Cowan v. Stamps	MS	1872	transport	money					no	yes	no
Bonds v. Foster	TX	1872						property	yes	yes	yes
Johns v. Scott	VA	1873		money	$3,000 plus interest	$64,300 plus interest			yes	yes	no
Thweatt v. Redd	GA	1873	transport	money					yes	no	no
Raines v. Raines's Executors	AL	1874		money			education	property	no		no
Heirs of Johnson v. Johnson	LA	1874	transport		$50 each	$1,230.00			no	yes	no
Estill v. Deckerd	TN	1874						property	no	yes	no

Source: Author's tabulation.

Note: MeasuringWorth, "Purchasing Power Today of a US Dollar Transaction in the Past," www.measuringworth.com/ppowerus.

paid $1,000.[22] (The executor paid the legacy, but because he did so in Confederate currency and while Victorin was still a minor, he was ordered to pay the young man again—this time in legal tender.) Though possible, even probable, it is not clear whether William Porter was the father of young Victorin, whether he had a fondness for Meme, or whether he simply wished to change the course of Victorin's life. Regardless of the motivation, Porter's intent to provide for the young man was never disputed.

Though it does not appear as commonly as the distribution of money or property, testamentary provisions for education, like the one made to young Victorin, are noteworthy. Some who favor reparations today identify education as a crucial site of attention (see Nzingha 2003; Brooks 2004). The historical desire to overcome educational deprivation, and particularly the effects of statutory bans on teaching enslaved people to read, is well known. Narratives written by enslaved people, such as Frederick Douglass, Harriet Jacobs, and many others, convey their fundamental belief in the value of literacy and enlightenment. Such narratives describe imposed ignorance as theft; it stole a person's potential and possibility for self-reliance and intellectual growth. As Lynda Morgan (2016, 46) has written, "Few of the many robberies laid at slavery's feet brought more lasting pain than the proscriptions against literacy, whose effects were irremediable." It is hardly surprising then, that after emancipation, freedpeople demonstrated an "unquenchable thirst for education," not just so they could read the Bible, though that was certainly a motivator, but also so they could read the labor and sharecropping contracts they were being forced to sign and keep their own accounts to prevent the theft of their earnings (Foner 1988, 96–100).

Land and money were bequeathed more often than funds for education, and tended to have the greatest effect on freedpeople's lives. As freedman and Baptist minister Garrison Frazier famously described to General Sherman in their January 1865 meeting, "Slavery is, receiving by *irresistible power* the work of another man, and not by his *consent*" (*New-York Daily Tribune* 1865). Here, slavery was construed not only as theft of enlightenment, but also of the product and value of one's labor (Morgan 2016, 23–27; Brooks 2004, 2). Some enslavers agreed, and determined that financial restitution for that robbery could be made through a will's provision. Some, including Eliza Ann Hamilton, specifically set aside wages collected for her bondspeople, which would be given to them upon their manumission. "These earnings [were] alleged to be at that time thirty thousand dollars," which amounts to approximately $528,000.00 today.[23] Within the free labor paradigm of the mid- to late nineteenth century (espoused by abolitionists, Free Soilers, and Republicans of all stripes), liberty mandated ownership of one's self and one's labor (see Foner 1995). In modern parlance, the right to earn was understood as an "extralegal marker" of a "multidimensional American citizenship"—an indication of one's civic embodiment as opposed to one's civil death (Tillet 2012, 6; on civil death, see Dayan 2011; Perrone 2023, chap. 5).

For many free labor adherents, liberty and wage labor went hand in hand as essential features of the modern age. Liberal economics, they posited, ensured that workers and employers would, as ostensible free equals, reach mutually satisfactory labor contracts. "In postbellum America," Amy Dru Stanley (1998, 2) reminds us, "contract was above all a metaphor of freedom." As Frazier's comments illustrate, however, many freedpeople adamantly disagreed. They idealized liberty as ensuring the independent means of production, and thus

22. *Porter v. Brown*, 21 La. Ann. 532 (1869). The will stated, "With the sum of one thousand dollars, which is to be put on interest . . . the proceeds of which are to go to the support and schooling of the child, and when the boy arrives at the age of eighteen years of age, it is my will that the above amount of one thousand dollars be paid over to him."

23. *Berry v. Hamilton*, 64 Ky. 1866 (1866). Hamilton's will was ultimately judged invalid because other heirs had a stake in the ownership of the enslaved people. She did not have the exclusive right to manumit them. Monetary value was calculated using MeasuringWorth, "Purchasing Power Today of a US Dollar Transaction in the Past," https://www.measuringworth.com/ppowerus (accessed January 18, 2024).

survival, free from oversight and dominion of others. Freedom required *land*. As Frazier told Sherman, "The way we can best take care of ourselves is to have land, and turn it and till it by our own labor—that is, by the labor of the women and children and old men; and we can soon maintain ourselves and have something to spare" (*New-York Daily Tribune* 1865). Land would provide the security necessary to maintain one's liberty by ensuring that freedpeople would not depend on another for the basic necessities of life. The formerly enslaved quickly learned how wages could be manipulated by White planters, and they knew that property would provide the means to live lives that reflected their own hopes and dreams, and would permit a fuller measure of independence. Provisions of land or money that could be used to buy it, then, were prized as reparations because they held the greatest potential for true liberation. Many continue to share this view.

Before and after emancipation, Black Americans recognized these reparations as essential to supporting independent, self-sustaining, free lives. They further understood that these forms of enrichment would establish the foundation for their children's success. Bequests became the nest eggs that would support future generations. Some testators agreed. They explicitly provided for subsequent generations, further suggesting that their sense of obligation transcended any single term of enslavement.[24] Joseph Glasgow's 1856 will manumitted all his bondspeople and "all their future increase."[25] Lucy Fine stipulated that the bequest made should go to specific bondspeople, "or their descendants," if named parties were no longer living.[26] Likewise, Owen Thomas made sure to include not only his enslaved people, but also any children "they may hereafter have."[27] Holiday Hayley's legacy was meant for the named persons and "their heirs forever."[28] Enslavers appeared to recognize that for a bequest to have its intended compensatory meaning, it had to be given without restriction. Certainly, as deft and able navigators of the American economy, planters understood the value of appreciable property and accrued wealth. Provisions were knowingly made even to those who had yet to be born, who had not been enslaved by or even known to the testator. Of particular note for today's reparations debates, one need not have been enslaved directly to receive compensation.

Some wills were generational in an additional sense. Perhaps more than any other, suits involving bequests to the testator's illegitimate children born to enslaved mothers further complicate traditional understandings of testamentary manumission. In some ways, they are outliers; they include a clear component of domesticity that the other suits do not share. Yet the intent of the testator in such cases was crystal clear. For instance, many enslavers took the bondspeople they considered family to free states—often to Ohio—in order to liberate them. They then used their wills to cement their domestic ties by naming their illegitimate children as the rightful inheritors of their estates. Indeed, some court records even describe fathers' anxiety about the future their children would face without the necessary steps to liberate and provide for them, knowing full well that White society would not accept them as equals (Perrone 2023, 210–18; see also Pascoe 2009).[29] Alfred H. Foster, for instance, bequeathed most of his property to the enslaved woman Leah Foster and their children—Fields, George, Isaac, Margaret, and Monroe. Prior to the Civil War, Alfred had taken his family to Ohio in order to execute their lawful manumission. "According to the testimony of Fields

24. Scholars of reparations regularly address "harms to descendants" as the basis for reparations (see Brooks 2004, chap. 3).

25. *Johns v. Scott*, 64 Va. 704 (1873).

26. *Monohon v. Caroline*, 65 Ky. 410 (1867).

27. *Thweatt v. Redd*, 50 Ga. 181 (1873), 183.

28. *Hayley v. Hayley*.

29. *Mathews v. Springer*, 16 F. Cas. 1096 (1871).

Foster, the eldest son, he spent his nights and frequently took his meals with the family." After four years in free territory, "Foster brought this family away from Cincinnati, and with them removed to the State of Texas."[30] After he died, the executor of Foster's estate refused to transfer ownership of his homestead to Leah and her children. Leah Foster went to court to defend her family and won her case.

Suits like this one opened up a pandora's box of issues related to so-called "miscegenation," mixed-race children, and the legitimacy of households that may have been acknowledged in a particular community, but had never been lawfully recognized (Hodes 1997, 3). The prospect of post-emancipation legitimation of such households—and the people who made them up—garnered near universal condemnation by Whites and Blacks alike.[31] These circumstances make the outcome in *Bonds*—ruling in favor of a racially heterodox family—all the more remarkable. To be sure, we should appreciate that such rulings may have had more to do with deferring to the intent of a White man's will than they did with any sense of justice for the formerly enslaved. In some instances, that is a fair assessment. In *Bonds*, however, we see more clearly that part of what motivated rulings was the changed status of the legatees. Judge Moses B. Walker wrote in the opinion for the court, "The parties continued to live together, habitating themselves as man and wife, until after the law prohibiting such a marriage had been abrogated by the 14th Amendment to the Constitution of the United States. A marriage might then be presumed in the State of Texas upon the same state of facts, which would raise a similar presumption in Indiana or Ohio."[32] As the opinion noted, not only were testators lawfully able to bequeath their assets to people they once claimed as property, the changed status of the freedpeople—specifically, their citizenship—entitled them to receive remuneration in any form, in any place, and without any limiting conditions.

The motivations of those who provided for illegitimate family members are perhaps easiest to discern; these bequests suggest that kinship mattered over other considerations. Perhaps surprisingly, however, most wills did not involve direct familial ties (see table 1). Instead, wills that bequeathed valuables to unrelated kin were more common and regularly suggested a sense of moral duty and, in some instances, accountability for the effects of enslavement. To be sure, none of this absolves any enslaver of their sins; they were participants in slavery who held persons as property, and their wills did nothing to bring about the end of the peculiar institution, or even necessarily liberate all their bondspeople. Still, attributing testamentary sentiments paternalism alone obscures their complexity, and, more important, prevents us from recognizing that some enslavers assumed a need for—and actually provided—reparations that offered both financial restitution and, in some instances, recognition of the harms of slavery. They were enslavers and also believed in compensation. Their actions can be read as paternalistic and reparatory. Collectively, contested wills reveal that a small but steady stream of enslavers chose to manumit and provide for enslaved people, and that some of them articulated that they did so out of a sense of justice, even over the desires of other claimants or descendants. If nothing else, testamentary sources divulge the intent to liberate, itself a confession that reparation was due, even though it may—and often did—deprive other heirs of financial benefit. In the words of one judge, "The bequest of freedom is of a higher nature than a pecuniary legacy."[33] Enslavers openly recognized that freedom itself was worth something, perhaps more than anything else.

30. *Bonds v. Foster,* 36 Tex. 68 (1872), 68–69.

31. Generally, Whites abhorred the notion of racial mixing outside of slavery, and Black leaders claimed that freedpeople had no interest in such unions (see Perrone 2023, chap. 7; Pascoe 2009; Bardaglio 1995; Kennedy 2003; Davis 1999).

32. *Bonds v. Foster*, 68–70.

33. *Armstrong v. Pearre*, 47 Tenn. 171 (1869), 178.

AFTER EMANCIPATION

During the antebellum era, cases regarding inheritance were freedom suits first and foremost. Liberation from bondage was a prerequisite for receiving secondary bequests. Postbellum, such cases lost this primal urgency and became exclusively demands for redress. Under these circumstances, the suits studied here amounted to claims made by empowered persons, "invested with civil existence," who insisted on receiving what had been promised to them.[34]

Freedom, and ultimately citizenship, meant that Black people had equal access to the law's authority to right wrongs and, as scholar Lynda Morgan notes, even "reset damaged moral compasses" for a new age (Morgan 2016, 15–16). Perhaps more important, the courtroom provided Black Americans with a site in which to perform their own liberation, to, as Ralph Ellison (2021, 357) terms it, "free themselves by becoming their idea of what a free people should be." Every Black litigant—win or lose—who sued to have bequests honored engaged in the "ritual of legal redress" (Tillet 2012, 142).

Placing their suits in a broader continuum of reparations litigation reveals that such rituals became time honored, regularized, and pointed in their purpose. As Salamishah Tillet writes about present-day litigants in reparations suits, "the plaintiffs not only participate in the long history of Black reparations activism, but also embody one of the most popular and public of American democratic performances: lobbying in court." In so doing, litigants attempt to "safeguard future black citizens from the harms of an inherited economic and civic injustice" (Tillet 2012, 143). Even though the scope of the harm was restricted to slavery alone (as opposed to all subsequent harm that would follow), the same can be said of litigants in the Reconstruction era. The very act of litigation countered civic injustice by allowing the assertion of personhood, while the inheritance they secured addressed economic injustice by providing financial restitution.

The relationship between civic and economic injustice is clearly observable in postbellum litigation. For instance, the formerly enslaved people of Thomas Todd sued the estate's administrator for the money that had been bequeathed to them in Todd's will. July Todd, Thomas Henderson, Lunnon Henderson, Eliza Henderson, Caesar Robertson, and Rachel Robertson stood to inherit $800 each. We can imagine what such a sum would mean for freedpeople. Adjusted for inflation, $800 would be worth approximately $19,185.01 today. Most likely, the funds would have been used to purchase land and establish self-sufficiency, as was most desired by the formerly enslaved. It could also have been used to pay for education, transportation overseas, or just the basic necessities of life—clothing, food, medical care. No matter how the freedpeople intended to use the money, the bequests would certainly have provided a significant leg up in the world relative to those who entered freedom with no provision at all. The plaintiffs sought that advantage knowing what it would mean for their futures; it aligned with the general view that economic independence was an essential element for achieving liberation.

Choosing to bring a suit also reveals a great deal about Black mindsets in the decades following the Civil War. By taking up the call of Daina Ramey Berry (2017, 5) to move beyond "what enslaved people *experienced*" and grapple with "their engaged understanding" of themselves, litigation acquires additional salience (emphasis in the original). Freedpeople used their suits to demand not just what had been promised to them, but also to express newly acquired political power and to articulate that they believed they were worthy of inheriting it. In short, through their legal demand, freedpeople imbued the bequests with reparatory meaning. Their claims were not without risk. Freedpeople sued White members of their own community already stinging from the loss of slavery and defeat in the Civil War. Violence remained an ongoing part of social interactions between Black and White southerners, and retaliation for a perceived social transgression was always a possibility (on violence, see Emberton 2013; Rable 2007; Williams 2012). Yet Black litigants were not deterred.

Suits, then, provide us with a metric for rep-

34. *Johns v. Scott.*

arations defined by freedpeople themselves: they were early expressions of freedpeople's legal standing and self-worth that courts and the public had to recognize. Consider the arguments made against the children of Holiday Hayley: They could not be legatees because they were not "persons *in esse*."[35] That is, the law did not recognize them as legal persons. In rejecting such a claim, the North Carolina court tacitly acknowledged the previous denial of the slave's legal personhood and upheld that the litigants' new status removed the incapacities under which they had previously lived. In this respect, suits brought by freedpeople carried the potential for removing one of the badges and incidents of slavery: that bondspeople, as property themselves, were incapable of inheriting anything.[36] Litigants demanded and received judicial appreciation of their unencumbered personhood, divested from the disabilities of slavery, which is itself a fundamental requirement of obviating the subjection of slavery and repairing its harm.

Despite the fact that formerly enslaved people had acquired the standing to sue, the right to testify on their own behalf, and the right to live where they chose, southerners continued to challenge the propriety and even the possibility that Black people could inherit from the estates of their former enslavers. Those looking to block bequests developed a set of common arguments to frustrate the exercise of these rights. First, they claimed that because the persons in question had not been freed by the terms of the will itself, but rather by federal action and constitutional change, they were no longer eligible to receive the bequests. As the family members of John Glasgow argued, "when free, otherwise than by the will, they are not those for whom it was created."[37] Likewise, the executor of Thomas Todd claimed, "that the emancipation of plaintiffs was the paramount object of the testator" and that "object having been effected through other agencies, this fund can not be claimed by plaintiff, but falls back into the estate of the testator."[38] Second, and often related, White litigants argued that the legatees named would have to relocate to places stipulated in the will (such as Liberia, or a free state) if they wished to collect. Simply put, the exact conditions of the will had not been met, and could not ever be met by virtue of federally mandated emancipation.

Judges rejected these arguments. The Kentucky Court of Appeals, for instance, determined that "the amendment of the Constitution of the United States abolishing slavery has made them free and legally capable of taking and enjoying their legacies. And the fact that they became free, not by the will, but by law, . . . is not material." The freedpeople could "enjoy their freedom as fully and securely as elsewhere."[39] The judge further stipulated that "they will be entitled to interest" on the amount bequeathed because of the delay in its payment.[40] Similarly, the Supreme Court of North Carolina consistently maintained the position they established in 1867 in *Hayley v. Hayley.* A year later, the court noted that emancipation was a "collateral advantage caused by what . . . was a mere accident." It should be viewed as a "'windfall' or piece of good luck to the freedmen."[41] In 1870, they again insisted that "It is immaterial how [the enslaved persons] obtained freedom. Although it was accomplished in a manner not contemplated by the testator, when he published his will, . . . the plaintiffs are entitled to recover *something* in this suit."[42]

35. *Hayley v. Hayley*, 181.

36. Despite formal legal rules, enslaved people not only acquired and possessed property, they bequeathed it (see Penningroth 2003).

37. *Johns v. Scott.*

38. *July Todd v. Trott*, 64 N.C. 280 (1870), case record number 9565, "Answer of Defendant."

39. *Parish v. Hill*, 63 Ky. 396 (1866), 398.

40. *Parish v. Hill.*

41. *Whedbee v. Shannonhouse*, 287.

42. *July Todd v. Trott*, 282.

In cases when testators set aside funds for transport to Liberia, postbellum rulings often awarded them what would have been spent on travel to Africa in addition to other legacies.[43] A windfall, indeed.

In cases concerning wills that required transportation to free territories or to Liberia, the rights of freedom acquired by Black Americans trumped other considerations. As the Louisiana Supreme Court put it, "The first privilege of freedom is the right to choose a home from out [in] the world." Further recognizing that the harms of slavery could no longer be inflicted after emancipation, the court continued, "it might have been worse than slavery to . . . force them from the place of their birth, to break up their associations and to sunder even such weak ties as were socially know to them, and to drive them across the seas, among strangers, and in a distant land."[44] Here, Black litigants and White judges agreed with many of today's activists: the desires and choices of the recipients of reparations must be considered and prioritized. During Reconstruction, the heirs contesting freedpeople's right to inherit based on relocation stipulations were not rewarded. Quite simply, emancipation meant they no longer had any say in the matter.

Black litigants, on the other hand, had plenty to say, including that they knew that the estates in question had the funds to pay their legacies, despite arguments to the contrary. Led by July Todd, the lawyer's brief for the plaintiffs in *Todd v. Trott* claimed, "The defendant has possessed himself of sufficient estate to pay all the debts and the legacies of the said estate, and that plaintiffs have demanded their legacy, that the said estate is wholly free from debt, and ready for a settlement, but the defendant refuses to pay under the pretense that the defendants have been freed by the results of war."[45] The argument is clear enough. If the estate had the funds to pay the legacies, then they had to be honored. How the plaintiffs reached freedom made no difference. How they ascertained the status of the estate's finances, however, is less obvious. Very likely, freedpeople mobilized the same tactics and skills that they had used while enslaved to acquire knowledge; they almost certainly tapped into long-standing communication networks—the "grapevine telegraph"—that included Black and White members of the broader community (Lussana 2016, chap. 5; Hahn 2005, chap. 3).

Embedded in claims like these are the outlines of the new relationships freedpeople attempted to forge with former enslavers and their descendants. To be sure, the language used in the briefs—"demanded their legacies," "applied to and requested" the estate's administrator "to come to a fair and just account"—reflects a standard legal formulation. Nevertheless, the very possibility of freedpeople asserting such prerogatives not only signaled the promise of equal citizenship but also was its tangible expression. Rather than being silenced in a courtroom proceeding, and contrary to the expected deference and supplication historically demanded by the master class, freedpeople insisted they be shown the same respect owed to any other rights-bearing subject, regardless of race. Litigation and the receipt of significant bequests, then, held out the potential to correct and repair the social and legal subjugation experienced by bondspeople. Even though it may not have involved any explicit atonement for slavery, victorious litigants forced members of the White community to recognize their elevated status, and perhaps even the diminished standing of the fallen planter class. The message conveyed by Black litigants was unequivocal: freedpeople knew they had a legal right to inherit what had been promised to them without any encumbrance, and they rejected White resistance to their restitution.

CONCLUSION

The evidence analyzed in this article suggests that private understandings of the debts for slavery shared between enslaved and enslaver mirror the conclusions reached by many mod-

43. See *Milly v. Harrison,* 47 Tenn. 191 (1869).

44. *Heirs of Johnson v. Johnson,* 26 La Ann. 570 (1874).

45. *July Todd v. Trott*.

ern scholars of reparations. Above all, testators and legatees agreed that the goals of bequests were to eliminate dependency, provide sufficient resources for self-sustaining lives, and promote generational uplift. Four mutually accepted resources emerged to as central to achieving these goals: funded transport to free territory, real property (land), money, and education. Though provisions for transport were less important following emancipation, the other forms of reparations remained crucial for Black advancement. In significant ways, the distribution of assets from enslavers to formerly enslaved people achieved one of the core objectives of modern reparations schemes. It "spread the cost of slavery" directly to those "who benefitted the most from these prior systems of racial subordination" (Brooks 2004, 3).

Still, post-emancipation litigation was not collectively organized. It was not part of any broader endeavor to secure reparations for all who endured the horrors of slavery. It was not meant to articulate any specific policy goal. When freedpeople demanded to have bequests honored, they were not asking for back pay or stolen wages based on market calculations.[46] They were not claiming wrongful enslavement, as some successfully did, both before and after the Civil War (McDaniel 2019; Schweninger 2018). Nor were they asking the government for anything. Efforts to address these broader issues would emerge later, after Reconstruction collapsed without delivering programmatic land reform or the resources that would have been necessary to truly lift all freedpeople out of conditions of servitude and peonage (Foner 1995; Berry 2006b).

Instead, going to court to demand their due allowed some freedpeople the ability to perform and fully claim their citizenship for the first time, and not only articulate that they deserved to be free and compensated for their time in bondage, but also expose that their enslavers had *believed the same thing*. They asserted their legal personhood, revealed the intimate details of relationships between enslavers and enslaved, and forced others in their communities to confront their humanity—as they, not the slave market, defined it. And for the first time, they had to be heard.

The findings of this article do not suggest, however, that reparations today should be pursued through private litigation. As scholars have established, courts cannot offer the scale of relief demanded by slavery or the ongoing effects of its legacies; rulings would be limited to those able to bring suits, not the full population to whom redress is due; and no case could promote national atonement or promote reconciliation, especially for government complicity in slavery's existence (Darity and Mullen 2020; Brophy 2006; Tillet 2012). Procedural issues, especially statutes of limitations, further challenge the possibility of successful reparations litigation (Brophy 2006, 102–103). Nonetheless, a thorough exploration historical litigation offers important insights into potential bases for reparations from unlikely sources—enslavers themselves—and, isolates crucial claims for slavery's debts articulated by those who experienced bondage firsthand. Indeed, scholars have long recognized the important role that history must play in any quest for reparations, given that "reconstructions of the historical record . . . are implicit in national acknowledgments" (Tillet 2012, 145). They "provide the factual foundation for apology" (Brooks 2004, 148). Failure to grapple with this history—and to atone for the harm it has continued to produce—reifies and reproduces "the racial paradigm" engendered by generations of slavery, segregation, and subjugation (Tillet 2012, 145). This article contends that this history—the "factual foundation"—should include not only the harms of slavery, but also the unexpected attempts to redress it made by those who experienced and participated in it.

Similarly, the suits explored here do not consider the searing racism, horrific violence, and pervasive inequality that has continued to circumscribe Black lives long after emancipation, as modern reparation schemes attempt to do. All were decided before the onset of Jim Crow, the rise of mass incarceration, housing discrimination, or the development of myriad other forms of disfranchisement. They never-

46. As I note elsewhere, postbellum courts recoiled at the possibility of back pay, and quickly shut the door to the possibility (Perrone 2023, 134).

theless constitute an archive, or perhaps more aptly, a "counterarchive," of voices who do not typically appear in any official record (Tillet 2012, 158). In this way, the evidence presented here follows the lead of Mary Frances Berry, who, in her own study of Callie House and the Ex-Slave Pension Movement, attempted to resuscitate the lives and works of those who continued to agitate for reparations after the collapse of Reconstruction. The litigants who sued to have the families of their former enslavers make good on their promises of restitution should remind us that when it comes to conceiving, conceptualizing, and considering the history of reparations, "scholars may think the contours of the larger story have been fully described, [but] there is another story. There must be many other stories that need rescuing from obscurity. This is the work that must be done" (Berry 2006a, 327).

The potential of building a capacious database of historical reparations claims like these—of constructing a complete "counterarchive"—is significant. Such an effort would begin a process of identifying the persons to whom testamentary reparations were promised by enslavers and verify if the bequests were honored. The nineteen-case data set used here is a small subsection of this litigation. All were settled by the highest appeals courts of their states; countless others were settled at lower-level tribunals. Many similar suits were decided before Reconstruction. Some disputes never made it to court at all, but many enslavers' wills still remain in archives across the country.

Although legal limitations will certainly prevent claims from being made by descendants of those cheated of their bequests, this kind of accounting adds further force to arguments in favor of reparations in the present. That is, many Americans have already been denied specific restitution that had been promised to them. Data collection and analysis may be able to say how much of this type of debt remains outstanding and account for the value of appreciation lost to legatees and their families. It might even help us identify property that may have ultimately been stolen from the Black individuals or their descendants who received it, opening the possibility to trace something unusual and perhaps unconsidered: reparations that were granted but subsequently stolen through fraud, violence, or other malfeasance.

Most important, a study of historical reparations, broadly construed, would add a measure of heft to existing conversations about their necessity and help counter arguments against providing them. Even some who perpetrated the ultimate sin—enslavers themselves—believed that bondspeople were owed "justice," as North Carolinian James Whedbee called it. There is, in other words, an unappreciated historical basis for delivering reparations that was made while slavery remained legal by those who held others in bondage. This unexpected source of historical justification for restitution can and should be added to discussions and defenses of present-day reparations efforts.

The children of Holiday Hayley could never have imagined that their legal fight to secure their inheritance would be interpreted as a reparations suit. The notion of collective action and careful planning to secure reparations for everyone harmed by slavery would have been similarly incomprehensible to them. To the contrary, Alfred, Octavius, Jackson, Louisa, and Paul Hayley probably never contemplated that their case would have much of a public effect at all. Instead, they knew only that their father intended them to have his property; that even if he did not say it publicly, the bequest cemented a kin relationship shaped by slavery; and that freedom entitled them to the full enjoyment of their legacy. We do not know how long or even if the Hayley family lived on their property, or how they used the additional monies they inherited. Perhaps they sold the land and moved somewhere they found more hospitable. Maybe their descendants still own it. Whatever the circumstances, their suit and others like it illustrates that freedpeople understood the requisites for successful lives after slavery, that receiving reparations warranted litigation, and above all, that they themselves were worth the fight and value of the redress. They still are.

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