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Historic and Modern Social Movements for Reparations: The National Coalition
for Reparations in America (N'COBRA) and Its Antecedents

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Historic and Modern Social Movements for Reparations: The National Coalition for Reparations in America (N'COBRA) and Its Antecedents

Adjoa A. Aiyetoro & Adrienne D. Davis¹

INTRODUCTION

In the 1950s, a young mother in Fairbanks, Alaska joined her local NAACP. Ten years later, a freshman student at Bowdoin College in Maine began studies that included a course on Jean-Paul Sartre's existentialism. During the same decade, two social workers blended their work for New York's state and municipal organizations with their racial activism. In between, in the early 1960s, the son of a Garveyite attended Malcolm X's speeches in New York City's Mount Morris Park. What these seemingly disconnected individuals have in common is that in the 1980s and 1990s they would all find their way to the National Coalition of Blacks for Reparations in America (N'COBRA) and its Litigation Committee. Among the approximately twenty members of the Committee some would be lawyers; others not. Some would believe in the redemptive power of law to right wrongs; others would reject legal justice as an oxymoron in the United States. They would subscribe to political ideologies as diverse as Herbert Marcuse's Marxism; Black nationalism; and liberal integrationism. Some were members of the Black elite; others embraced a working-class consciousness and/or rejected the allures of middle-class integrationism.

Most of the legal scholarship on reparations for Blacks in America focuses on its legal or political viability.² This literature has considered both procedural obstacles, such as statutes of limitations and sovereign immunity, as well as the substantive conception of a defensible cause of action.³ Indeed, Congressman John Conyers introduced H.R. 40, a bill to study reparations, in 1989 and every Congressional session since, and there have

¹ Associate Professor of Law, University of Arkansas, William H. Bowen School of Law; William M. Van Cleve Professor, Washington University School of Law. For helpful comments and suggestions, we would like to thank Susan Appleton, Gretchen Arnold, Theresa M. Beiner, Howard Brick, Greg Magarian, Jeff Redding, Ajamu Sankofa, and Rebecca Wanzo. For outstanding research assistance we would like to thank Emily Danker-Feldman, Corey Thomas, and Bernita Washington. As always, Rachel Mance provided Professor Davis with exceptional support, as did Kathie Molyneaux and her first-rate staff in the Washington University School of Law Library. We would also like to thank Jason Gillmer for inviting us to be part of this historic symposium on Lawyers of Color and providing us a forum to develop this project.

² In this Essay, the Authors capitalize "Black." This is a compromise between the Authors' two preferences. Professor Aiyetoro prefers "Black people of African descent" in discussing reparations because that is the term N'COBRA's Litigation Committee negotiated. Professor Davis prefers "black" because she believes that race is a social construction that is historically and politically contingent and does not want to suggest it exists in a meaningful way outside of specific cultural practices. The Authors have settled on "Black" for this Essay, unless quoting or paraphrasing others.

³ See, e.g., ALFRED L. BROPHY, REPARATIONS: PRO & CON 98, 103 (2006) [hereinafter REPARATIONS]; Jon M. Van Dyke, *Reparations for the Descendants of American Slaves Under International Law, in SHOULD AMERICA PAY?: SLAVERY AND THE RAGING DEBATE OVER REPARATIONS* 203, 203 (Raymond A. Winbush ed., 2003); Adjoa A. Aiyetoro, *Formulating Reparations Litigation Through the Eyes of the Movement*, 58 N.Y.U. ANN. SURV. AM. L. 457, 466, 471 (2003) [hereinafter *Formulating Reparations*]; Alfred Brophy, *Some Conceptual and Legal Problems in Reparations for Slavery*, 58 N.Y.U. ANN. SURV. AM. L. 497 (2003); Suzette M. Malveaux, *Statutes of Limitations: A Policy Analysis in the Context of Reparations Litigation*, 74 GEO. WASH. L. REV. 68 (2005); see Eric J. Miller, *Representing the Race: Standing to Sue in Reparations Lawsuits*, 20 HARV. BLACKLETTER L.J. 91 (2004).

been three law suits that have received national attention. This Essay takes a different approach, considering reparations as a social movement with a rich and under-explored history.⁴ As Robin Kelley explains, such an approach is “more interested in the historical vision and imagination that has animated the movement since the days of slavery.”⁵ In keeping with such an emphasis, this Essay focuses on the diverse array of individual actors and institutions that for over a century have comprised the reparations movement. Contemplating reparations in this way, as a social movement, shifts attention away from the doctrinal and policy questions that have dominated the legal literature on the feasibility of reparations, and instead poses an intriguing set of other questions about the reparations movement’s complex, and at times competing, set of actors, institutions, and ideologies that, like N’COBRA, have been underexplored in the legal literature.⁶ This Essay takes as its case study seven of the diverse group of Black activists and lawyers who in 1995 joined the N’COBRA Reparations Litigation Committee. Using interviews with these original Committee members, it situates their contemporary activism within the long history of Black activism that viewed reparations and redress as part of the struggle for liberation from slavery and its vestiges.⁷ In so doing it changes the barometer by which we measure its effectiveness; instead of focusing solely on whether a specific legal result has been obtained, a social movements approach also questions how ordinary people develop a common “oppositional consciousness” and mobilize to confront what they perceive as injustice.⁸ This Essay tells their history, leading up to the resurgence of reparations activism today. It concludes that conceiving reparations as a century-old social movement in addition to a political and legal claim casts the contemporary reparations movement in a different light, illuminating competing visions of Black political subjectivity and activism within the reparations movement.

In addition, although this Essay exposes evolving and varied understandings and conceptions of reparations, it also reveals an underlying theme of calls for compensation, repair, and redress that distinguishes reparations from a conventional civil rights focus on antidiscrimination and equality. While the legal history of racial activism remains

⁴ Several of the essays in Michael Martin and Marilyn Yaquinto’s anthology, *Historical Redress*, take a social movements perspective. See, e.g., Martha Biondi, *The Rise of the Reparations Movement*, in REDRESS FOR HISTORICAL INJUSTICES IN THE UNITED STATES: ON REPARATIONS FOR SLAVERY, JIM CROW, AND THEIR LEGACIES 255 (Michael T. Martin & Marilyn Yaquinto eds., 2007); Robin D.G. Kelley, “A Day of Reckoning”: *Dreams of Reparations*, in REDRESS FOR HISTORICAL INJUSTICES IN THE UNITED STATES, *supra*, at 203; see also MARY FRANCES BERRY, MY FACE IS BLACK IS TRUE: CALLIE HOUSE AND THE STRUGGLE FOR EX-SLAVE REPARATIONS 231 (2005) (biography of Callie House, a nineteenth-century reparations activist and leader of first mass reparations movement); WHEN SORRY ISN’T ENOUGH: THE CONTROVERSY OVER APOLOGIES AND REPARATIONS FOR HUMAN INJUSTICE (Roy L. Brooks ed., 1999) [hereinafter SORRY] (several essays take social movements approach).

⁵ Kelley, *supra* note 4, at 210.

⁶ Non-legal historians have given N’COBRA more attention in their discussions of reparations. See, e.g., Biondi, *supra* note 4, at 257 (characterizing N’COBRA as “currently the largest grassroots reparations organization in the United States.”) (citation omitted); Kelley, *supra* note 4, at 217–18 (contextualizing N’COBRA within radical Black political thought and calls linking reparations to racial self-determination); REILAND RABAKA, DU BOIS’S DIALECTICS: BLACK RADICAL POLITICS AND THE RECONSTRUCTION OF CRITICAL SOCIAL THEORY 160 (2008) (“Perhaps more than any other organization, N’COBRA has consistently contributed to modern reparations discourse and debate.”).

⁷ The Authors were also members of the Reparations Litigation Committee; Aiyetoro was its chair.

⁸ See generally OPPOSITIONAL CONSCIOUSNESS: THE SUBJECTIVE ROOTS OF SOCIAL PROTEST (Jane Mansbridge & Aldon Morris eds., 2001) [hereinafter OPPOSITIONAL CONSCIOUSNESS].

overwhelmingly the history of civil rights struggle, the Authors' incorporation of the N'COBRA activists, and their predecessors, gives a very different view of Black struggle for liberation.

First, this approach suggests that a crucial distinguishing factor in reparations movements is the turn (or return) to courts and law as potential instruments of justice. Historians Dylan Penningroth and Martha Jones have urged that, in order to more fully understand the relationship between law and race in the U.S., we have to look not only at how the law operated on Black people, but also at the claims Blacks made on the law. Writing about the nineteenth-century, both have contended that Black actors viewed law instrumentally as a vehicle for personal and group self-determination, succeeding in construing themselves as legal and political subjects, even when they lost the particular cases they brought.⁹ Similarly, reparations claims are meaningful not only for what they tell us about the law and legal institutions, which thus far have largely denied redress, but also for what these suits and other *non-legal* activism reveal about the people who bring them and the social movements in which they participate. As this Essay will demonstrate, some reparations activists have turned to the courts and other legal institutions, making "claims" in Penningroth and Jones' language; others reject legal institutions as illegitimate and urge reparations either in international forums or as a matter of revolutionary politics. Thus within the reparations movement, the legitimacy of the law, and hence the meaning of reparations, is viewed in starkly different terms.

Second, the history of reparations also reveals deep-seated class tensions between Black Americans. In *Reparations as a Dirty Word*, law professor Lee Harris contends that "Public advocacy of slavery reparations has come largely from historically controversial figures and groups."¹⁰ Harris makes explicit a latent characteristic of the reparations movement: that, until very recently, its primary proponents and leaders have

⁹ See, e.g., Martha S. Jones, *Leave of Court: African American Legal Claims Making in the Era of Dred Scott v. Sandford*, in *CONTESTED DEMOCRACY: POLITICS, IDEOLOGY AND RACE IN AMERICAN HISTORY* 54 (Mianisha Sinha & Penny Von Eschen eds., 2007) (urging claims-making perspective in context of Blacks seeking travel permits); DYLAN C. PENNINGROTH, *THE CLAIMS OF KINFOLK: AFRICAN AMERICAN PROPERTY AND COMMUNITY IN THE NINETEENTH-CENTURY SOUTH* (2003) (contending that even enslaved Blacks, who were conceived as property, made economic claims, thereby demonstrating legal and political agency); see also Alejandro De La Fuente, *Slave Law and Claims-Making in Cuba: The Tannenbaum Debate Revisited*, 22 *LAW & HIST. REV.* 339, 342 (2004) (arguing that slaves' claims that "gave concrete social meaning to the abstract rights regulated in the positive laws."); Ariela Gross, *Beyond Black and White: Cultural Approaches to Race and Slavery*, 101 *COLUM. L. REV.* 640 (2001) (describing new methodologies that allow one to view legal actors as agents); Rebecca J. Scott, *Gradual Abolition and the Dynamics of Slave Emancipation in Cuba, 1868–86*, 63 *HISP. AM. HIST. REV.* 449, 465 (1983) ("Despite these obstacles, the legal recognition of grievances and the admission of testimony in a special court created possibilities for some patrocinos to pursue change. The cases brought before these boards thus take on new meaning as historical evidence: not proof that the law was just or benevolent, but insight into the strategies, tactics, and values of those former slaves who lodged complaints with the Juntas."); Rebecca J. Scott & Michael Zeuske, *Property in Writing, Property on the Ground: Pigs, Horses, Land, and Citizenship in the Aftermath of Slavery, Cuba, 1880–1909*, 44 *COMP. STUD. SOC'Y & HIST.* 669, 669–70 (2002) ("The end of slavery finds former masters losing possession of persons, and former slaves acquiring it. But it also finds other resources being claimed and contested, including land, tools, and animals—resources that have shaped former slaves' working lives to date, and that now shape their prospects for the future.").

¹⁰ Lee A. Harris, "*Reparations*" as a *Dirty Word: The Norm Against Slavery Reparations*, 33 *U. MEM. L. REV.* 409, 421 (2003).

been grass-roots organizers, activists, and racial radicals, rather than members of the Black social and economic elite.¹¹ Indeed, Black elites and their institutions have largely rejected, belittled, or distanced themselves from racial reparations, perhaps as a strategy of racial respectability. And of course, this view of reparations activists as outsiders and “controversial figures” has long shaped how white Americans and others viewed the legitimacy of reparations claims, including how it is viewed today. Historians such as Mary Frances Berry and Robin Kelley have taken note of how reparations movements both reflected and generated tensions between elite and non-elite Blacks.¹² As the Essay explores reparations history, a crucial part of what it contrasts will be how elites and non-elites viewed reparations claims and racial justice more generally. Hence, part of the largely untold history of reparations is the struggle not only for reparations itself, but also the struggle between distinct Black classes over strategies for citizenship and the right to envision the racial future.

Third, a “social movements” approach also reveals significant and under-attended ideological differences among reparations advocates. Some have viewed reparations as a route to full citizenship for Black Americans, almost part and parcel with conventional civil rights. This tradition has culminated with the modern-day “Dream Team”—a cadre of extremely talented lawyers and academics, some drawn from the nation’s most elite institutions.¹³ In stark contrast, other activists have viewed reparations as a path to racial

¹¹ The use of the term Black elite follows its common usage in scholarship on Black history, political life, and culture. The Authors are not suggesting that this group is somehow superior to other Black Americans. Rather, the Authors are following the literature and describing groups and individuals who are viewed by mainstream institutions as spokespersons for the Black community. Blacks may gain elite status by virtue of their education, wealth, family background, skin color, or political orientation.

¹² BERRY, *supra* note 4, at 230; Kelley, *supra* note 4. On tensions between Black elites and non-elites, see *infra* notes 138-54 and accompanying text.

¹³ While the Reparations Coordinating Committee, known as the Dream Team, is itself diverse, members associated with elite academic and litigating organizations have drawn the most media and popular attention. See, e.g., James Cox, *Special Report: Activists Challenge Corporations that They Say Are Tied to Slavery*, USA TODAY, Feb. 21, 2002, at 1A (“Behind the new legal thrust is the Reparations Coordinating Committee, headed by Harvard law professor Charles Ogletree and author-activist Randall Robinson. The team includes heavyweight trial lawyers Johnnie Cochran and Dennis Sweet, and scholars such as Harvard’s Cornel West, Georgetown’s Richard America and Columbia’s Manning Marable.”); Peter Flaherty, *New Era of Reparations Looms for U.S. Issue: Once Pushed Only by Radicals, Compensation for Slavery Is Now Being Championed by Mainstream Groups*, BALTIMORE SUN, Aug. 5, 2001, at 5C (“The fact that high-powered lawyers are preparing for the issue further confirms the real possibility of slave reparation payments. Charles J. Ogletree, a Harvard University law professor, heads a powerful legal team called the Reparations Coordinating Committee that includes Johnnie Cochran, of O.J. Simpson Fame.”); Jason B. Johnson, *Reparations for Slavery; Recalculating the Price of Human Bondage: Insurance Records May Aid Cause of Slave Descendants Who Want Compensation*, S.F. CHRON., Apr. 14, 2002, at A4 (“A group of high-profile scholars and lawyers, meanwhile, is preparing its own legal case against the federal government and unidentified businesses. The Reparations Coordinating Committee, whose members include Harvard Professors Cornel West and Charles Ogletree and lawyer Johnnie Cochran, would sue over slavery and the subsequent 100 years of legal segregation and discrimination suffered by blacks in housing, employment and banking.”); Tamar Lewin, *Calls for Slavery Restitution Getting Louder*, N.Y. TIMES, June 4, 2001, available at <http://www.nytimes.com/2001/06/04/us/calls-for-slavery-restitution-getting-louder.html> (“A team of prominent African-American lawyers has announced plans to file lawsuits early next year seeking damages from the federal government and companies that profited from slavery. The team is part of the Reparations Coordinating Committee, led by Charles Ogletree, a professor at Harvard Law School, and Randall N. Robinson, the founder of TransAfrica, a lobbying group.”); Kristen Mack, *Houstonians Join Rally Cry for Reparations in D.C.*, HOUS. CHRON., Aug. 18, 2002, at A24 (“Also drawing

nationalism and sovereignty, as some seek redress in the form of an independent state for Black Americans or repatriation to Africa. These include The Republic of New Afrika; the Black Panthers; even the Nation of Islam. Still others, such as civil rights activist James Forman, have embraced reparations within socialist frameworks. Thus, within the reparations movement, there is a diverse array of competing ideologies.

In the end, the Authors hope to show how reparations is one arc of the centuries long struggle for Black racial equality, even preceding what Jacquelyn Dowd Hall has called “the long civil rights movement.”¹⁴ Reparations activism is notable not only for its challenges to conventional legal structures and institutions, but also as a lens into the Black struggle for liberation from slavery and its vestiges. Conceiving reparations as a social movement foregrounds different visions of “freedom” and “redress” and how those visions are shaped by class and ideology.

Part I of this Essay offers an introduction to some of the historical individuals and institutions who were the principal early advocates for Black reparations. While many have contributed to the struggle for racial reparations, the Essay focuses on activists who devoted significant effort to the cause; conceived of their vision in the language of reparations, *i.e.*, recompense for slavery; and organized institutions or movements to implement their vision. Section II then situates these activists within reparations conceived as a social movement. It also teases out of the history some of the tensions and competing visions within the movement—over the legitimacy of U.S. legal institutions; between racial elites and non-elites; and ideological differences over the purposes of reparations, *i.e.*, full citizenship or separate nationhood. Part III supplements this history by introducing the National Coalition of Blacks for Reparations in America (N’COBRA), which was founded in 1987 with the express goal of revitalizing reparations as a grass-roots movement that would simultaneously be attractive to mainstream Blacks. While N’COBRA has been largely overlooked in the legal literature on reparations, a social movements approach foregrounds its contributions to the modern reparations activism. Part IV then presents biographical narratives of seven members of the N’COBRA Reparations Litigation Committee. The Authors interviewed these seven, asking them about the political and personal influences that led them to become reparations activists and to join N’COBRA’s Litigation Committee. (The questions we asked the interviewees are included as an Appendix to this Article.) Part V concludes with some thoughts about how incorporating a “social movements” approach to reparations activism and this case study of N’COBRA’s Litigation Committee and its members both supplements and challenges the emerging legal history of reparations and, more broadly, the struggle for racial equality and human rights for Black people.

I. THE HISTORY OF THE BLACK REPARATIONS MOVEMENT

attention is the Reparations Coordinating Committee, an elite group of lawyers, scholars and public officials.”).

¹⁴ Hall calls for a re-periodization of the civil rights movement beyond the romanticized era of *Brown v. Board of Education* and Martin Luther King soundbites to encompass the populist struggles against structural injustice which preceded and followed it. Jacquelyn Dowd Hall, *The Long Civil Rights Movement and the Political Uses of the Past*, 91 J. AM. HIST. 1233, 1234–35 (2005).

Although it has not drawn the scholarly attention of what Jacquelyn Dowd Hall has called the “long” civil rights movement, organized reparations activism precedes Emancipation.¹⁵ (The question as to whether the reparations movement has had the continuity of civil rights activism remains to be seen, in light of further historical work.) In his 1830 Appeal, addressed “to the Coloured Citizens of the World, but in Particular, and Very Expressly, to Those of the United States of America,” David Walker spoke to the need for both Black emancipation from slavery and reparations.¹⁶ At an 1854 emigrationist convention, Blacks called for “a national indemnity” as “redress of our grievances for the unparalleled wrongs . . . which we suffered at the hands of this American people.”¹⁷ After the Civil War racial and gender activist Sojourner Truth circulated a petition urging the federal government to redistribute land to freed Blacks as redress for centuries of coerced uncompensated labor and as a means to independence and freedom from slavery.¹⁸ Truth then identified two purposes of racially redistributing resources—as compensation for past abuses and as a prerequisite for personal and group sovereignty in the future—which formed the building blocks of formalized reparations petitions and calls to come.¹⁹

The remainder of this Section explores the reparations activism of three leaders in the movement, Callie House, Queen Mother Audley Moore, and James Forman. For each, it situates their activism within the larger context of their lives and political work, while also tracing if and how their activism shifted. This Section suggests some commonalities and, equally importantly, some divergences, among the three that Section II then amplifies into three themes that characterize the reparations movement—an ambivalence toward law and political institutions; class tensions over not just the pragmatism, but even the desirability of reparations; and finally ideological differences. This Section starts by offering some brief background on early calls for Black reparations that preceded the rise of a sustained movement.

A. *Early Calls*

Efforts by freed Blacks to gain reparations are well-documented. Freedpeople, as individuals and in organized groups, petitioned and pleaded for and insisted on redress for their enslavement. They were not alone. Institutions such as the Bureau of Refugees, Freedmen, and Abandoned Lands, more commonly known as the Freedmen’s Bureau,

¹⁵ See *id.* at 1235; see also REPARATIONS, *supra* note 3, at 19–20; Vincene Verdun, *If the Shoe Fits, Wear It: An Analysis of Reparations to African Americans*, 67 TUL. L. REV. 597, 600 (1993) (classifying reparations into five waves of activism).

¹⁶ DAVID WALKER, DAVID WALKER’S APPEAL 80 (Black Classic Press 1993) (1830) (stating that Americans “have to raise us from the condition of brutes to that of respectable men, and to make a national acknowledgement to us for the wrongs they have inflicted on us.”).

¹⁷ Kelley, *supra* note 4, at 205. Earlier Truth had said that white Americans “owed the colored race a big debt, and if they paid it all back, they wouldn’t have anything left for seed.” William A. Darity, Jr., *Reparations*, in 4 ENCYCLOPEDIA OF AFRICAN-AMERICAN CULTURE AND HISTORY 2315, 2315 (Jack Salzman et al. eds., 1996).

¹⁸ Kelley, *supra* note 4, at 205 (“America owes to my people some of the dividends [and] I shall make them understand that there is a debt to the Negro people which they can never repay. At least, then, they may make amends.”).

¹⁹ See SORRY, *supra* note 4, at 341, for surveys of Black reparations movements. See also Kelley, *supra* note 4, at 205.

also contended that Confederate lands be redistributed to the freedpeople and that some form of economic redistribution was their best chance of achieving independence.²⁰ The director of the Freedmen's Bureau, General Howard, began to set aside 40 acre plots for freedmen in spring and early summer of 1865.²¹ Similarly, some military officials took the extraordinary step of endorsing redistribution, as well. In January 1865, General William Sherman's famous Field Order No. 15 divided plantations along the Atlantic Coast into 40 acre parcels to be distributed to 40,000 freed slaves.²² And earlier, in 1861, freedpeople had begun to farm abandoned lands in Union military enclaves in Port Royal and Beaufort, South Carolina, and Vicksburg, Mississippi.²³ Unlike the Freedmen's Bureau, which controlled few resources, the Union Army had seized and controlled substantial land.²⁴

²⁰ The Bureau was authorized by the Reconstruction Congress in March 1865, to help the South transition from an enslaving economy to a democratic society while also establishing basic rights for Black Americans. In addition to distributing abandoned or confiscated Confederate lands, the Bureau was charged with establishing schools for the freedpeople and administering justice on their behalf. As such, it had to mediate post-War political ideology, Black claims to equality, and white resistance to change. Plagued by lack of resources (it had no budget after 1870) and Congressional or Executive Branch support, the Bureau lasted a mere seven years, from 1865-1872. On the Bureau, *see generally* PAUL ALAN CIMBALA, *THE FREEDMEN'S BUREAU: RECONSTRUCTING THE AMERICAN SOUTH AFTER THE CIVIL WAR* (2005); BARRY CROUCH, *THE FREEDMEN'S BUREAU AND BLACK TEXANS* (1992); WILLIAM S. MCFEELY, *YANKEE STEPFATHER: GENERAL O.O. HOWARD AND THE FREEDMEN* (2d ed. 1994); DONALD G. NIEMAN, *TO SET THE LAW IN MOTION: THE FREEDMEN'S BUREAU AND THE LEGAL RIGHTS OF BLACKS, 1865-1868* (1975); CLAUDE F. OUBRE, *FORTY ACRES AND A MULE: THE FREEDMEN'S BUREAU AND BLACK LANDOWNERSHIP* (1978); JULIE SAVILLE, *THE WORK OF RECONSTRUCTION: FROM SLAVE TO WAGE LABORER IN SOUTH CAROLINA, 1860-1870* (1994); *THE FREEDMEN'S BUREAU AND RECONSTRUCTION: RECONSIDERATIONS* (Paul A. Cimbala & Randall M. Miller eds., 1999); Paul Skeels Perice, *The Freedmen's Bureau: A Chapter in the History of Reconstruction*, 3 ST. U. IOWA STUD. SOC. ECON. POL. & HIST. (1904).

²¹ BERRY, *supra* note 4, at 12 (stating allotments were rental with eventual sale at end of three years); ERIC FONER, *FOREVER FREE: THE STORY OF EMANCIPATION AND RECONSTRUCTION* 64 (2006) [hereinafter *FOREVER FREE*].

²² ERIC FONER & OLIVIA MAHONEY, *AMERICA'S RECONSTRUCTION: PEOPLE AND POLITICS AFTER THE CIVIL WAR* 32 (1995). Adult males could claim forty acres, and Sherman made army mules available, hence the phrase "Forty acres and a mule." *Id.* By June of 1865, approximately "40,000 freedmen had been settled on 400,000 acres of 'Sherman land.'" *Id.*

²³ DARLENE CLARK HINE ET AL., *THE AFRICAN-AMERICAN ODYSSEY* 327 (2005).

²⁴ According to historian Eric Foner:

The [Freedmen's] Bureau controlled over 850,000 acres of abandoned land in 1865, hardly enough to accommodate all the former slaves but sufficient to make a start toward creating a black yeomanry. Howard's subordinates included men sincerely committed to settling freedmen on farms of their own and protecting the rights of those (mostly on the "Sherman reservation") who already occupied land. In Tennessee, General Fisk began locating blacks on the 65,000 acres under his control. In Louisiana, Thomas Conway invited applications from freedmen who wished to "procure land for their own use," and leased over 60,000 acres to blacks (including plantation owned by the son of former President Zachary Taylor) Most dedicated of all to the idea of black land ownership was Gen. Rufus Saxton, a prewar abolitionist who directed the Bureau in South Carolina, Georgia, and Florida during the summer of 1865.

ERIC FONER, *RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863-1877*, at 158 (1988) [hereinafter *RECONSTRUCTION*].

In contrast, Paul Skeels Perice notes that the Bureau acquired all rights of ownership except the right of sale for property that was abandoned or confiscated, but not needed for military purposes. Perice,

While uniform in their calls for Blacks to become owners of the southern lands they had cultivated, these endorsements of redistribution varied drastically in motivation, vision, and intent. The Freedmen’s Bureau, charged with managing the newly freed Black population, sought the immediate relief of Black poverty and reliance on the federal government.²⁵ As described by W.E.B. Du Bois, the Bureau was “a government guardianship for the relief and guidance of white and Black labor from a feudal agrarianism to modern farming and industry.”²⁶ Military officials, on the other hand, sought to relieve themselves of the tens of thousands of refugees trailing their campaigns, while also disabling the Confederate resistance, and perhaps even punishing southern white rebels at the end of a long and exhausting war. Even Radical Republican allies of the freedpeople had diverse goals—of consolidating political power by economically as well as politically disfranchising the white planter class. This is not to say that these institutions of government did not also see the inherent justice of redistribution. There is substantial evidence that they did. And yet, they viewed redistribution as also in service of broader agendas. In contrast, many of the formerly enslaved Blacks saw and articulated reparations primarily as that—as both redress for brutal wrongs and also as their route to full freedom.

For their part, southern Blacks viewed themselves as entitled to the land they had worked and cultivated for generations, in some cases for two centuries.²⁷ They also understood that becoming yeomen farmers and landowners was their best option to becoming economically self-sufficient people and able to exercise their political rights in the United States. Several historians have explored the struggles between Blacks and their former masters over whether the freedpeople would become small land-owning farmers, the sort of republican workforce envisioned by Thomas Jefferson, or be relegated to servile laborers, sharecroppers, and tenant workers.²⁸ History records the result was the latter: as Amy Dru Stanley puts it, bondage gave way to contract as a

supra note 20, at 129. “Abandoned lands were defined as those whose owners were voluntarily absent, aiding the rebellion. Confiscated property was that which had been condemned and sold by decree of federal courts to which title was thus vested in the United States.” *Id.* This was approximately 800,000 acres in Virginia, Georgia, South Carolina, North Carolina, Kentucky, Tennessee, Alabama and Florida. *Id.* While the purposes of Bureau controlling the property was for dividing it up and allotting it to freedmen, this intention was impractical because (1) a large chunk of property had already been leased by treasury agents and the leases had to be respected; (2) the bureau only had control over a small amount of land (“only two-tenths of one per cent of the land in the insurrectionary states was ever held by the bureau”) which would make it “impossible to give even one acre to a family of freedmen”; and (3) based on restoration policies, the granting of land was uncertain. *Id.* at 129–30.

²⁵ Lawrie Balfour, *Unreconstructed Democracy: W.E.B. Du Bois and the Case for Reparations*, 97 AM. POL. SCI. REV. 33, 37 (2003). She notes that, writing prior to the New Deal, Du Bois called the Bureau “the most extraordinary and far-reaching institution of social uplift that America has ever attempted.” *Id.*

²⁶ See, e.g., RECONSTRUCTION, *supra* note 24, at 70–71. Berry notes that the refugees were a diverse class in that “[s]ome slaves ran away to free territory, others followed the Union troops who passed through, and some joined the Union Army.” BERRY, *supra* note 4, at 99.

²⁷ During the mid-seventeenth century the colonies began to formalize racial slavery, distinguishing it from indentured servitude and erecting an increasingly thick regulatory structure to manage it. See A. LEON HIGGINBOTHAM, JR., *IN THE MATTER OF COLOR: RACE AND THE AMERICAN LEGAL PROCESS, THE COLONIAL PERIOD 167* (1978) (analyzing how early American colonial law developed and implemented racialized slavery).

²⁸ See, e.g., RECONSTRUCTION, *supra* note 24; AMY DRU STANLEY, *FROM BONDAGE TO CONTRACT: WAGE LABOR, MARRIAGE, AND THE MARKET IN THE AGE OF SLAVE EMANCIPATION* (1998).

primary mechanism for controlling and subjugating Blacks economically and politically.²⁹ Yet, the fact that freed Blacks “strongly supported the confiscation, division, and redistribution of large plantations” is telling.³⁰ They felt entitled to some share in the land they had cultivated and improved, which, because of their forced labor, had formed such a foundational piece of not just the South’s, but the entire nation’s vast wealth. While they may not yet have used the language of reparations, even at this crucial stage in racial history, Blacks viewed recompense and redress for slavery as crucial to a meaningful and full transition from enslavement to becoming full political and economic actors.

In sum, during the Civil War and after slavery ended, Blacks and some of their Republican and military allies sought to redistribute to the freedmen the Confederate land and other resources the Union forces had seized or controlled, as a matter of equity, desert, as well as political and military strategy. In the end, all of the redistributions to freedpeople enacted by the Freedmen’s Bureau and the Army were nullified.³¹ (Robin Kelley notes that “by the first half of the twentieth century . . . ‘forty acres and a mule’ had become shorthand for broken promises.”³²)

However, the government did award some reparations that it did not subsequently overturn. Noted by several historians has been the fact that former slaveholders urged reparations for their “liberated property.”³³ Less noted is that some former slaveholders

²⁹ “The ascendance of contract allegedly had transformed labor from a relation of personal dominion and dependence to a commodity exchange in which buyers and sellers were formally equal and free, yet also mutually dependent on one another.” STANLEY, *supra* note 28, at 75.

³⁰ Biondi, *supra* note 4, at 256. Berry reports that in January 1865 the Secretary of War went to Savannah to meet with General Sherman and Black leaders to discuss the needs of the Black population:

Twenty blacks selected by Union authorities, deacons, and ministers, three quarters of whom had been slaves, came to the meeting and let national leaders know that land was their major priority. When asked how they could best support their families, their self-selected leader, sixty-seven-year-old Baptist minister Garrison Frazier of Granville, North Carolina, replied, “To have land and turn in and till it by our labor.”

BERRY, *supra* note 4, at 11 (footnote omitted).

³¹ By May 1865, a mere four months after Sherman’s Order, President Andrew Johnson gave amnesty to many of the Confederates, pardoning them and restoring their land. *See, e.g.,* FOREVER FREE, *supra* note 21, at 76 (“During the summer of 1865, however, as part of his plan of Reconstruction, President Andrew Johnson ordered nearly all the plantation lands restored to their former owners. To [General O.O.] Howard fell the task of informing freedpeople that they must either sign labor contracts to work for planters, or be evicted.”); *see also* BERRY, *supra* note 4, at 12 (“The government dashed the sea island freemen’s hopes after their hard work tilling land they thought was theirs.”); STANLEY, *supra* note 28, at 41 (“For many months after the war’s end [freedmen] clung to the hope that tracts of land would be distributed to them as initially promised by military proclamations.”). *See* RECONSTRUCTION, *supra* note 24, at 160 for a discussion of how the freedpeople were led to believe their possession of the land was permanent. *See also* FOREVER FREE, *supra* note 21, at 64 (“[Sherman’s] order left unclear whether the land grants were permanent or temporary” while the legislation authorizing the Bureau to allot land “convinced many former slaves that the federal government had assumed the responsibility of providing them with land.”).

³² Kelley, *supra* note 4, at 209.

³³ *See, e.g.,* JOSEPH A. RANNEY, IN THE WAKE OF SLAVERY: CIVIL WAR, CIVIL RIGHTS, AND THE RECONSTRUCTION OF SOUTHERN LAW 60 (2006) (“Compensation for freed slaves was [so] important to slaveholders in Maryland and Kentucky . . . [that] the 1867 legislature formally petitioned Congress for compensation ‘for the inconveniences, public and private, produced by such changes of system . . . according to the faith of the federal Government solemnly pledged.’ . . . Tennessee’s legislature also submitted a compensations petition in 1865. The 14th Amendment ended all hope by explicitly prohibiting compensation for freed slaves, although, curiously, West Virginia asked Congress to consider

actually did receive compensation for their economic losses suffered from the emancipation of the Black people they had owned. President Lincoln made several appeals to border states for compensated emancipation and in April 1862 signed into effect a law providing for gradual and compensated emancipation in the District of Columbia.³⁴ Ironically, then, the Union government determined that whites, but not Blacks, were “victims” of the Civil War. Those who had enslaved others and committed national treason were the only ones to receive permanent compensation.

The remainder of this Section considers three activists who emerged as leaders in the reparations movements, achieving some success in developing institutions, grass-roots mobilizations, or national consciousness about redress for slavery.

B. *Individuals & Institutions*

1. Callie House

Mary Frances Berry’s 2005 book, *My Face Is Black Is True*, details what she calls “the first mass reparations movement led by African Americans,” organized by ex-slave Callie House and the Reverend Isaiah Dickerson.³⁵ In 1897, House and Dickerson formed the National Ex-Slave Mutual Relief, Bounty and Pension Association (Ex-Slave Pension Association), which repeatedly petitioned for pensions and eventually sued the federal government seeking pensions for the former slaves. While Dickerson was the official head of the Ex-Slave Pension Association, Berry demonstrates that House was a driving force of the organization.

Born in Rutherford County, Tennessee, in 1861, House was part of the freedom generation, “the first generation of African Americans to reach maturity after the abolition of slavery.”³⁶ House grew up during the instability of first the Civil War and then Reconstruction and its aftermath. In the early 1860s, the Union Army swept through Tennessee, liberating enslaved Black families like House’s, although Blacks in Tennessee were not officially emancipated until March 1865.³⁷ In the wake of the Army, Black

compensation two years after the amendment was ratified.”); JILL WATTS, *GOD, HARLEM U.S.A.: THE FATHER DIVINE STORY* 181 n.4 (1995) (“The state of Maryland slave census, compiled in 1867, was to aid loyal Maryland slaveholders who sought compensation for ‘property’ lost as a result of the Civil War. The government never paid these masters. . . . Masters were instructed to record the ages of their slaves in 1864, the year the state issued a general emancipation proclamation.”).

³⁴ See, e.g., ABRAHAM LINCOLN, *AL to Orville H. Browning*, in *LINCOLN ON RACE & SLAVERY* 218, 222 (Henry Louis Gates, Jr., ed., 2009) (“Lincoln preferred that Congress adopt a compensated emancipation scheme as the best way to retain the border states and satisfy more radical members of the Republican Party”); ABRAHAM LINCOLN, *THE LANGUAGE OF LIBERTY: THE POLITICAL SPEECHES AND WRITINGS OF ABRAHAM LINCOLN* (Joseph R. Fornieri ed., 2003); see also ALLEN C. GUEZLO, *LINCOLN’S EMANCIPATION PROCLAMATION: THE END OF SLAVERY IN AMERICA* (2004) (tracing Lincoln’s many failed attempts to get border state legislatures to pass compensated emancipation); ABRAHAM LINCOLN, *Drafts of Bill for Compensated Emancipation in Delaware*, in *LINCOLN: SPEECHES AND WRITINGS 1859–1865*, at 276, 276–78 (Don E. Fehrenbacher ed., 1989) (discussing Lincoln’s attempt at enacting compensated emancipation in Delaware).

³⁵ BERRY, *supra* note 4, at 4; see also Bernie Jones, Book Review, 25 *LAW & HIST. REV.* 423, 423–24 (2007).

³⁶ See, e.g., THOMAS D. MORRIS, *SOUTHERN SLAVERY AND THE LAW 1619–1860* (1996).

³⁷ BERRY, *supra* note 4, at 54.

families like House's became refugees, which the Lincoln Administration and military termed "contraband."³⁸ Following their formal emancipation, House's family did not join the minute class of Blacks who were able to earn livings and some degree of economic and social independence as skilled laborers, ministers, physicians, or lawyers. Instead, "Callie's family, like the rest of the country's still large, mostly disenfranchised, Black population, engaged in farming as tenants or sharecroppers, or employment as domestics or laborers" for wealthier whites, working conditions that did not differ substantially from conditions under slavery.³⁹ Berry notes that by 1880, House's father had died and she was living with her mother in her sister and brother-in-law's house, located in a poor Black community in South Nashville.⁴⁰ House attended school while her mother took in washing.⁴¹ House married in 1883, and between 1885 and 1893 had six children, four of whom survived.⁴² After her husband, William, died, House supported her family by taking in wash, as had her mother and many other Black women in her circumstances.⁴³ By the time she started her activism, she was supporting four children as a washwoman.

In 1890, Walter Vaughan, the white son of a former slaveholder and native of Alabama, had begun to lobby Congress to pass a bill for pensions for ex-slaves. Vaughan modeled the proposed bill on the generous pensions Congress had authorized for Union Army veterans.⁴⁴ Berry notes that Vaughan's agents came to Rutherford County, selling pamphlets explaining the ex-slave pension bill.⁴⁵ Like some Black leaders, House apparently had "misgivings" about Vaughan's organization and his motives.⁴⁶ Still, the

³⁸ Because Tennessee was "not in rebellion [it] had been exempted from the Emancipation Proclamation [and] Callie, as well as the large population of refugees in the cities and slaves still in the rural areas, remained legally in bondage in the state" until March 1865. *Id.* at 21.

³⁹ *Id.* at 8–9; see also JAMES MARTEN, CIVIL WAR AMERICA: VOICES FROM THE HOME FRONT 209–222 (2003) (discussing daily life in contraband camps).

⁴⁰ BERRY, *supra* note 4, at 26.

⁴¹ *Id.* at 27.

⁴² *Id.* at 28.

⁴³ Berry describes how married Black women often took in laundry to help their households make ends meet. *Id.* at 33, 52–54; see also TERA W. HUNTER, TO 'JOY MY FREEDOM: SOUTHERN BLACK WOMEN'S LIVES AND LABORS AFTER THE CIVIL WAR 56–65, 74–97 (1997) (discussing increases in numbers of Black washwomen as well as their efforts to ameliorate their working conditions).

⁴⁴ BERRY, *supra* note 4, at 34.

⁴⁵ Ten thousand pamphlets were sold in 1891 for a dollar apiece. *Id.* at 33. "Poor African Americans bought such publications, usually jointly, and passed copies around and read them to one another since they often could not afford the purchase price." *Id.* at 34.

⁴⁶ Historians differ on Vaughan's bona fides. Compare BERRY, *supra* note 4, at 36–37 ("The cover of Vaughan's book shows his interest in remedying the harm done to the South and not necessarily the harm done to slaves. . . . [H]e wanted to help blacks primarily in order to revive the southern economy. The ex-slaves would, through spending the pensions they received, pass along the financial benefit to whites. By adding to the region's meager resources for business and industrial development, the money provided to ex-slaves would relieve the devastation of the South caused by the Civil War."), and Kelley, *supra* note 4, at 208 ("Vaughan believed that such a pension plan not only was just but could also relieve southern taxpayers from the burden of supporting this rapidly aging black population. . . . Although Vaughan himself was never indicted for fraud, it is worth noting that by the time his movement collapsed around 1903, he had earned over \$100,000 from fees collected."), with David W. Blight, *If You Don't Tell It Like It Was, It Can Never Be As It Ought to Be*, in SLAVERY AND PUBLIC HISTORY: THE TOUGH STUFF OF AMERICAN MEMORY 19, 30 (James Oliver Horton & Lois E. Horton eds., 2006) ("Vaughan had a passion for the welfare of former slaves and he founded a movement to secure pensions for freedmen . . ."). Berry

idea of pensions for former slaves captured her imagination. House was like other Black Americans who “had Union veterans in their families, and they knew pensions were available, although widows and children had difficulty obtaining them because they lacked documentation of marriages and births.”⁴⁷ As just noted, House was part of the “freedom generation,” which grew up after Emancipation as “the first generation of African Americans to reach maturity after the abolition of slavery.”⁴⁸ In contrast, the Blacks on whose behalf she would work “were the first generation to experience old age in freedom.”⁴⁹ Slave owners, exercising power backed by the state, had compelled Blacks to spend their productive years doing backbreaking labor for them, without compensation. Southern rules also prohibited enslaved Blacks from accumulating, inheriting, or saving property.⁵⁰ With no savings, pensions, or means of support, many of the freedpeople were too old and/or disabled to support themselves. “[Y]ears of manual work, bad diet, and no medical care” had taken their toll.⁵¹ Nor was the struggling “freedom generation” in an economic position to support their aging family members.⁵² Freedpeople were desperately in need of pensions, not as charity, but because they were entitled to redress for their years of uncompensated labor. Using Vaughan’s organization as a model, House joined with Isaiah Dickerson to found the National Ex-Slave Mutual Relief, Bounty and Pension Association. For the next twenty years, House dedicated herself to organizing and lobbying for ex-slave pension legislation.

House and Dickerson formed the Association in 1896, headquartering it in Nashville, “the black church hub of the South.”⁵³ The Association held its first

notes that, following repeated failures to get legislation passed, at the 1907 national convention the Association passed a resolution to endorse the pension bill with a “new tack,” that “to refill the depleted treasury of the South, made so by the ravages of war.” BERRY, *supra* note 4, at 166.

⁴⁷ BERRY, *supra* note 4, at 34. “Occasionally some African-American veteran or widow succeeded in obtaining a military pension, which became big news.” *Id.* at 109, 119–21. Yet, the vast majority of Black veterans and their families confronted problems, both political and procedural. *Id.* Even the legendary Harriet Tubman, who, in addition to helping people escape slavery, had “served in the Union Army as a cook, nurse, scout, and spy,” received no pension until 1888 when she was awarded a “widow’s pension” upon the death of her husband, a veteran. *Id.* at 48–49. Even then, she received less than she was entitled to by law. *Id.*; see also EDWARD A. MILLER, JR., *THE BLACK CIVIL WAR SOLDIERS OF ILLINOIS: THE STORY OF THE TWENTY-NINTH U.S. COLORED INFANTRY 174–243* (1998); RICHARD M. REID, *FREEDOM FOR THEMSELVES: NORTH CAROLINA’S BLACK SOLDIERS IN THE CIVIL WAR ERA* (2008); Richard Reid, *USCT Veterans in Post-Civil War North Carolina*, in *BLACK SOLDIERS IN BLUE: AFRICAN AMERICAN TROOPS IN THE CIVIL WAR ERA* 391, 411 (John David Smith ed., 2002).

⁴⁸ BERRY, *supra* note 4, at 54.

⁴⁹ *Id.* at 54.

⁵⁰ See, e.g., HIGGINBOTHAM, *supra* note 27, at 145; MORRIS, *supra* note 36, at 349.

⁵¹ BERRY, *supra* note 4, at 51.

At the end of the nineteenth century, when the Ex-Slave Association began, a freedman or – woman emancipated at age thirty would have been sixty-seven. Among the first generation of African Americans to enjoy freedom, large numbers were in their sixties, seventies, and eighties and unable to work at manual labor because they were suffering from a variety of ills, some stemming from the hardships endured during slavery.

Id. at 64.

⁵² See *id.* at 117. “Moreover, the poverty of the ‘first freedom’ generation of African Americans meant they could not sustain both their older relatives and their own families.” *Id.* at 65.

⁵³ *Id.* at 50–51.

convention there in 1898, where the Association elected House assistant secretary.⁵⁴ Although Dickerson had previously worked with Vaughan, he and House took a different approach to achieving pensions for ex-slaves, conceiving pension advocacy as a social movement that should be racially inclusive but led by Black Americans. Berry emphasizes the Ex-Slave Pension Association's dual agenda. It was founded primarily to lobby and organize for federal pension legislation, but it was also structured as a benevolent association that would provide mutual aid to its members. "Local chapters were required to use part of the dues to pay for the burial of members and to provide mutual assistance in time of sickness and need."⁵⁵ Providing Blacks with these types of benefits was as necessary as the pensions themselves, given the immediate material needs of the freedmen.⁵⁶ The Association was open to anyone, charging ten cents a month in dues for members. Over the next twenty years, the Association eventually swelled to close to 300,000, with local affiliates in Atlanta, Vicksburg, New Orleans, Kansas City, and "small rural and urban communities all across the South and Midwest."⁵⁷

While the local chapters administered the mutual aid component, House and Dickerson spent most of their time organizing and petitioning for federal pension legislation for the ex-slaves. The pensions were based on redress and the "principle of debt owed," not on charity.⁵⁸ The Association adopted the formula Vaughan had developed, which calculated pensions based on age. The maximum benefits went to former slaves over seventy, who would receive a one-time payment of \$500 and \$15 per month.⁵⁹ Family members, legally responsible for the support of ex-slaves unable to support themselves, were also eligible for payments. The bill limited eligibility to freedpeople who had been freed by the Emancipation Proclamation, state constitutions, or other government proclamations or decrees.⁶⁰ While Dickerson was the president of the Association, Berry characterizes House as the public face of the movement. She traveled throughout all of the southern ex-slave states to mobilize grass roots support by enrolling members, organizing chapters, lecturing, and getting petitions signed. House obtained the support of "over 600,000 ex-slaves."⁶¹ While House welcomed non-Blacks into the

⁵⁴ *Id.* at 59–60.

⁵⁵ *Id.* at 61. Berry offers a brief summary of the racial history of mutual aid societies, noting that "[g]overnment provision of social services to the African-American community is a relatively recent development." *Id.* at 64 (footnote omitted).

⁵⁶ In this era before significant government welfare and entitlement programs, "[t]he rapidly aging members overwhelmed [Black] benevolent associations." *Id.* at 64; *see generally id.* at 64–65 (discussing growth of benevolent associations during this era).

⁵⁷ *Id.* at 94.

⁵⁸ *Id.* at 60. As Isaiah Dickerson said, "there is no reason why the old ex-slaves[,] who worked unpaid all their lives and then helped the Union digging ditches at the forts, washing the soldiers' clothes, cooking for them and nursing the injured," did not deserve pensions along with the white Union veterans. *Id.* at 44.

⁵⁹ *Id.* at 34.

⁶⁰ *Id.* at 34–37. The goal seems to have been to exclude slaves who had been freed by their owners. *Id.* As to the definition of who counted as a "former slave," proposed bills turned the old slave laws on their head. *Id.* Every enslaving state but Delaware had presumed that black people were slaves, whites free. *Id.*

⁶¹ Letter from I. H. Dickerson, Gen. Manager, to all Local Ex-Slave Associations in the United States (date unknown) ("Headquarters of the Ex-slave Mutual Relief, Bounty & Pension Association of the United States, Office –No. 708 Gay Street. To all Local Ex-Slave Associations in the United States, Come Greeting, as General Manager and Promoter of the movement, which has had so much opposition and more combats in its own circle than any other organization of the present day.") (on file with authors). Five paragraphs of text follows, stating that 600,000 ex-slaves signed the petition to support the senate bill. *Id.*

Association, she believed that the ex-slave pension movement should be under Black leadership. She also worked to unify the existing ex-slave pension organizations into a single association.⁶² To reach its members and motivate new ones, the Association also held annual conventions and started a newspaper, the *National Industrial Advocate*. As these organizing activities were going on, the Association repeatedly petitioned Congress to introduce bills authorizing pensions for former slaves.⁶³ At the same time, the Association opposed other bills designed to help freedmen but contrary to its purposes.⁶⁴

Frustrated with its lack of legislative success, the Association eventually turned to litigation, in 1915 filing what may have been the first lawsuit seeking Black reparations. In *Johnson v. McAdoo*, House and the Association claimed rights to the funds collected through the controversial “southern cotton tax.”⁶⁵ This was the name given to the revenues from the sale of southern cotton that had been confiscated for taxes by the federal government during the War and alleged to still be in the U.S. Treasury.⁶⁶ The lawsuit contended that the taxed cotton had been produced by wrongful slave labor, and hence the proceeds from its sale belonged to freed slaves. The plaintiffs sought over \$68 million in taxes collected between 1862 and 1868. As expected, the court denied the claim based on sovereign immunity, and the U.S. Supreme Court denied certiorari.

Eventually, Callie House’s activism turned her into what Berry terms “a racial outlaw.”⁶⁷ The Post Office, the Pension Bureau, and eventually the Justice Department, perceived the ex-slave pension movement as a threat, conducting a twenty-year campaign against House and her organization. Federal officials feared that House’s movement was, as Pension Bureau Inspector W.L. Reid said, “setting the Negroes wild.”⁶⁸ The Nashville postmaster concurred, telling the Acting Assistant Attorney General, “[s]he is defiant in her actions, and seems to think that the negroes have the right to do what they please in this country.”⁶⁹ Government opposition to the Association started with the Post Office in

⁶² House stated, “Let us consolidate all consolidate all ex-slave organizations and bring to bear upon the lawmakers of the country which we labored so long to develop every degree of influence within our power.” BERRY, *supra* note 4, at 60.

⁶³ Berry summarizes the bills introduced by Rep. Botkin (introduced in 1898), Senator Mason (introduced in 1898 and in each Congress thereafter), and Rep. Blackburn (introduced in 1902). *Id.* at 70–71, 167, 149. She also describes a negative report on ex-slave pensions issued in 1900 by the Senate. *Id.* at 73–74.

⁶⁴ For instance, the Association opposed a Senate bill to appropriate funds for a Home for “Aged and Infirm” freedpeople, as “the small size of the proposed facility was grossly insufficient,” and they feared it would preclude the broader pension legislation they favored. *Id.* at 73. Berry notes that this bill enjoyed support from many elite Black leaders. *Id.* at 72–73.

⁶⁵ *Johnson v. McAdoo*, 45 App. D.C. 440 (1916). This rationale presages a series of suits against German corporations for profits they obtained through the use of slave labor during the Holocaust. *See, e.g., Iwanowa v. Ford Motor Co.*, 67 F. Supp. 2d 424, 431–34 (D.N.J. 1999) (first in wave of slave labor actions against German corporations). *See generally* MICHAEL J. BAZYLER, *HOLOCAUST JUSTICE: THE BATTLE FOR RESTITUTION IN AMERICA’S COURTS* (2003).

⁶⁶ *See* BERRY, *supra* note 4, at 176. Berry notes that the cotton tax revenues were attractive because “it could be traced in the Treasury, and thus . . . avoided the issue of whether Congress would appropriate funds to pay for pensions as compensation for the ex-slaves.” *Id.* at 178. In repeatedly denying proposed pension legislation, Congress had repeatedly claimed there were no appropriated funds. *Id.* at 180.

⁶⁷ BERRY, *supra* note 4, at 4.

⁶⁸ *Id.* at 4, 83. He continued, “If this continues, the government will have some very serious questions to settle in connection with the control of the race.” *Id.* at 83.

⁶⁹ *Id.* at 124.

Washington, D.C., denying the organization use of the mail because it suspected fraud. While both House and the Association had a first amendment right to organize and lobby for pension legislation, the Post Office and Pension Bureau contended that they had represented that pension bills had passed and had claimed to be government agents collecting fees to enroll ex-slaves to receive pensions. In essence, the federal government prosecuted House for collecting dues and fees knowing that pension legislation would never be passed. (Berry notes that, “Gauged by such a measure, the NAACP’s long and unsuccessful struggle to gain an antilynching law could have been considered fraudulent.”⁷⁰) First, the Postmaster’s office issued an order to local post offices to deny payment on money orders made out to the Association or its officers, to exclude the organization’s literature from the mails, and also to exclude any letters to the association or its officers. Next, the government decided to actively prosecute House and others for fraud, even enlisting private organizations to do so.⁷¹ Berry details how the campaign against House coincided with the rise of federal power to control the mails and the Post Office’s shift in emphasis from a focus on obscenity to fraud.⁷² Although Berry makes a strong case for House’s innocence, in 1917 she was convicted and sentenced to a year in jail, a sentence that coincided with that of fellow activist Emma Goldman.⁷³

Berry characterizes the campaign against House as “the selective use of government power.”⁷⁴ She contends the government targeted Association officers; ignored similar activities by Vaughan, who was white; and declined to prosecute local pension swindlers who were brought to their attention. “The [local] chapters continued to provide mutual assistance but national political action came almost to a halt.”⁷⁵ The fraud order had severely hindered the Association’s ability to fund-raise. At least one chapter continued its self-help activities as late as 1931.⁷⁶ At the same time, the last of the aging ex-slaves continued to request support from the government, framing their requests in the language of compensation, redress, and repair, not government welfare. Historian David Blight has asked, “Was the best chance at slave reparations in American history missed in Callie House’s failed or crushed movement?”⁷⁷

2. Queen Mother Audley Moore

⁷⁰ *Id.* at 164.

⁷¹ *Id.* at 190, 192. The government also prosecuted Dickerson and even Cornelius Jones, the highly respected lawyer who had brought the lawsuit. *Id.* at 181–84; *see also id.* at 150–51 (describing how one commissioner of pensions enlisted the Grand Army of the Republic, a Union veterans’ association, to “squellch” the ex-slave pension movement).

⁷² The movement was a test of the expansion of the postmaster general’s power and had first amendment significance. *Id.* at 85–87, 132–34, 157–61, 128, 139–41.

⁷³ *Id.* at 202–06. The certificates of membership the Association issued clearly stated that members’ dues were to “aid the movement in securing the passage of the ex-slave bounty and pension bill.” *Id.* at 155, 164 (quoting NASHVILLE TENN. DAILY NEWS, Feb. 6, 1903, R.G. 28); *see also id.* 123–24 (quoting statements from House that she told potential members dues were to support passage of a pensions bill). Moreover, local chapters could readily account for dues collected to support their mutual aid function, yet the government ignored the Association’s dual status as a lobbying and benevolence association. *Id.* at 191, 194. Historians Berry and Kelley seem to disagree on House’s actual criminal liability. *Compare id.* at 191–95, with Kelley, *supra* note 4, at 209.

⁷⁴ BERRY, *supra* note 4, at 92.

⁷⁵ *Id.* at 159.

⁷⁶ *Id.* at 212, 218, 223.

⁷⁷ Blight, *supra* note 46.

Like Callie House, the woman who came to be known as “Queen Mother” Audley Moore, and one of the guiding lights of the post-World War II reparations movement, grew up poor and Black in the South.⁷⁸ Moore was born in 1898 in New Iberia, Louisiana, like most Black Americans of her generation, a descendant of slaves. All of her grandparents had been enslaved, and a white mob, angry for who knows what reason, lynched her grandfather, asserting the common pretext that he had raped a white woman.⁷⁹ Both of Moore’s parents died when she was in the fourth grade, and by fifteen, she was supporting her family by working as a hairdresser.⁸⁰ Moore left the South, traveled widely, and finally settled in New York City where she became a life-long advocate for racial justice and “a major figure in the history of black radicalism.”⁸¹

Moore started her activist life as a Garveyite. She had been introduced to Marcus Garvey’s United Negro Improvement Association (UNIA) in New Orleans. After moving to New York she became an active member in the UNIA and a community organizer. Garvey’s UNIA was the first wide-spread organization that embraced pan-Africanism and Black nationalism and put forth a vision of Black political self-determination and economic independence.⁸² After the UNIA collapsed in 1925, like many Black activists, Moore was drawn to the Communist Party. In the late 1920s and through the 1930s, the Communist Party’s radical racial politics attracted racial progressives. Moore and others believed in the Party’s strong defense and organizing on behalf of the Scottsboro Boys in Alabama, which the fledgling NAACP declined to support until very late, as well as the Party’s vision of self-determination and sovereignty for Blacks in the South. (This vision came to be known as the Black Belt hypothesis, various versions of which would become popular among many Black leftist and nationalist organizations, including reparations advocates, in the 1960s.⁸³) Although

⁷⁸ Moore’s title of “Queen Mother” was bestowed when she attended the funeral of Ghanaian leader pan-Africanist Kwame Nkrumah in 1972 and was honored as “an Ashanti Queen.” Kelley, *supra* note 4, at 210.

⁷⁹ AFRICANA: CIVIL RIGHTS: AN A–Z REFERENCE OF THE MOVEMENT THAT CHANGED AMERICA 288 (Kwame Anthony Appiah & Henry Louise Gates, Jr., eds., 2004) [hereinafter AFRICANA].

⁸⁰ *Id.*

⁸¹ Kelley, *supra* note 4, at 210.

⁸² See, e.g., TONY MARTIN, RACE FIRST: THE IDEOLOGICAL AND ORGANIZATIONAL STRUGGLES OF MARCUS GARVEY AND THE UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION (1976) (tracing successes and failures Garvey and UNIA faced by putting forth race-first ideology as grounds for black self-determination and economic independence on an unprecedented multi-national level); MARY G. ROLINSON, GRASSROOTS GARVEYISM: THE UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION IN THE RURAL SOUTH 1920–1927, at 2 (2007) (“Garvey envisioned black people in all parts of the world attaining economic independence from the control of whites. In his view, self-determination and self-sufficiency could be achieved only through organizations along racial lines and successful economic competition against other races.”).

⁸³ Thomas Sugrue puts it succinctly:

Beginning in 1928, when the Sixth World Congress of the Communist International declared the South’s plantation Black Belt an oppressed nation and championed the right of southern blacks to self-determination, the CP directed its energies toward the South. The Party targeted sharecroppers and peons, the nearly enslaved laborers whose toil was essential to the southern economy, in such places as the Mississippi delta and the Alabama black belt. Party members also attempted to organize laborers in the coalfields of Alabama, the tobacco plants of North Carolina, and the laundries of Birmingham. Communist writers built a powerful case against Jim Crow, documenting the everyday brutality that southern white power rested upon.

Moore left the Communist Party in 1950, for the rest of her life, she combined her commitments to Black nationalism and leftist, labor politics in wide-ranging activism. For instance, she joined the National Association of Colored Women and tried to build a coalition between the middle-class Black clubwomen, who largely adhered to what Evelyn Brooks-Higginbotham calls the “politics of respectability,” and the far more radical emerging industrial union movement.⁸⁴ Moore founded several organizations and, as a deep believer in coalition politics, advocated wide-ranging causes including tenants’ rights, educational reform, welfare, antilynching, police brutality, and gender and sexual justice.⁸⁵ However, she is almost certainly most remembered for her reparations advocacy, having been called: “the best known advocate of reparations in the early 1960s”; “a leader in the movement demanding reparations from the federal government for the labor of blacks under slavery”; and “one of the pioneers of the post-World War Two black reparations movement.”⁸⁶ In 1955, Moore began her campaign for reparations, authoring a pamphlet entitled *Why Reparations? Money for Negroes*.⁸⁷ In 1962, she came across a phrase in the *Methodist Encyclopedia* that “considers an enslaved people satisfied with their condition if the people do not demand recompense before 100 years have passed.”⁸⁸

Because this was the centennial of the Emancipation Proclamation, to meet the *Methodist Encyclopedia* statute of limitations, together with Dara Abubakari, Moore formed the Reparations Committee of Descendants of United States Slaves, Inc., to educate the grassroots community about reparations and mobilize for reparations from the federal government.⁸⁹ In 1963, she presented to the Kennedy Administration a petition with a million signatures she had organized. The petition urged “Without Reparations, our people can never be on equal terms with the white sons of our former slavemasters who continue to reap the abundant benefits of the wealth created by our foreparents through their centuries of unrequited labor.”⁹⁰ Subsequently, Moore petitioned the United Nations to recognize Black reparations and was also a founding member of the Republic of New Afrika, which argued for Black self-determination, including land and reparations. Widely overlooked and ignored by the Black mainstream, Moore became visible within Black Power circles in the 1960s, speaking at

THOMAS J. SUGRUE, *SWEET LAND OF LIBERTY: THE FORGOTTEN STRUGGLE FOR CIVIL RIGHTS IN THE NORTH* 23–24 (2008). See generally ROBIN D.G. KELLEY, *HAMMER AND HOE: ALABAMA COMMUNISTS DURING THE GREAT DEPRESSION* (1990) (discussing the Communist Party, its racial politics, and Black membership).

⁸⁴ SUGRUE, *supra* note 83, at 24; see, e.g., EVELYN BROOKS-HIGGINBOTHAM, *RIGHTEOUS DISCONTENT: THE WOMEN’S MOVEMENT IN THE BLACK BAPTIST CHURCH, 1880–1920* (1994).

⁸⁵ She is best associated with the Universal Association of Ethiopian Women, which she founded. Kelley, *supra* note 4, at 210; see also AFRICANA, *supra* note 79, at 288; Kelley, *supra* note 4, at 210; SUGRUE, *supra* note 83, at 272–73.

⁸⁶ AFRICANA, *supra* note 79, at 288; Kelley, *supra* note 4, at 210; SUGRUE, *supra* note 83, at 272.

⁸⁷ Darity, *supra* note 17, at 2316.

⁸⁸ Kelley, *supra* note 4, at 210.

⁸⁹ There is some discrepancy as to when Moore founded the Committee. Its incorporation papers were filed in the state of California in 1962. *Formulating Reparations*, *supra* note 3, at 463; see also Biondi, *supra* note 4, at 257; Conrad W. Worrill, *The National Black United Front and the Reparations Movement*, in *SHOULD AMERICA PAY?: SLAVERY AND THE RAGING DEBATE OVER REPARATIONS*, *supra* note 3, at 203; Marie Roberts, *City Council Candidate Calls for Reparations for Black New Yorkers*, MULTIRACIAL ACTIVIST, May 31, 2001, <http://multiracial.com/site/content/view/438/27/>.

⁹⁰ SUGRUE, *supra* note 83, at 272–73.

conferences, mentoring younger activists, and working for reparations until her death in 1996.⁹¹

Today, while acknowledging her significance in Black radical politics, scholars debate the efficacy of Moore's reparations advocacy. Some contend her efforts were "largely symbolic" and that "she did not have the organizational clout to force the question and [was] not taken seriously outside black power circles—with the exception of law enforcement."⁹² (This statement is eerily reminiscent of Callie House's own experiences as a reparations organizer a half century earlier.) The Authors would contend that, in addition to her vocalizing reparations and mobilizing a million signatures in support, Moore's advocacy is crucial in her *conception* of reparations. Unlike House, who sought pensions for ex-slaves or their immediate descendants, Moore had a much broader vision of redress. She called for \$500 trillion as *partial compensation* for historic injustice, which would be spread over four generations. She was explicit in conceiving the call for reparations as a grassroots, mass movement, and her conception of reparations reflected that. "The idea was not to make one or two or three or ten little people a little wealthier. The idea was to give some form of recompense even unto our fourth generation to come, because we've been four generations injured and it's going to take four generations in order to heal, you see."⁹³ Robin Kelley notes that "[t]he crucial point that Moore emphasized in making the demand was that a thoroughly democratic structure needed to be in place so that ordinary people could decide what to do with the money."⁹⁴ Moore also rejected the New Deal entitlement and War on Poverty programs many mainstream Black leaders and liberal whites lobbied for. Instead, Moore conceived reparations as "what the white man owes us . . . for the damages committed against our families, our homes, and our people."⁹⁵ Embracing self-determination principles, she rejected both the political and the psychological effects of the War on Poverty. "Besides being a pittance of what was owed black people, she complained that the War on Poverty gave the government and a handful of black elites control over our destiny."⁹⁶ For Moore, reparations was important not only in its fact, but in its structure. She sought multi-generational redress designed to repair slavery's legacy of injury and damage.

3. James Forman

⁹¹ Kelley, *supra* note 4, at 210; SUGRUE, *supra* note 83, at 272, 434. Even contemporary litigator and professor Charles Ogletree, a founding member of the Reparations Coordinating Committee, credits Queen Mother Moore with "planting the seed" in him on a flight to Tanzania. See CHARLES J. OGLETREE, JR., ALL DELIBERATE SPEED: REFLECTIONS ON THE FIRST HALF CENTURY OF *Brown v. Board of Education* 280–81 (2004).

⁹² SUGRUE, *supra* note 83, at 435; see also CHARLES P. HENRY, LONG OVERDUE: THE POLITICS OF RACIAL REPARATIONS 107 (2007) ("[S]upporters of reparations outside the Black nationalist community would have probably never heard of Queen Mother Moore.").

⁹³ SUGRUE, *supra* note 83, at 434.

⁹⁴ Kelley, *supra* note 4, at 210 ("The money was not to be controlled by a 'little clique,' nor was it intended to line the pockets of individuals. It had to be both substantial and community-controlled to enable African Americans 'to put up some steel mills, some industry with the reparations, to benefit the whole people.'").

⁹⁵ SUGRUE, *supra* note 83, at 434.

⁹⁶ Kelley, *supra* note 4, at 210. Kelley quotes Moore: "We don't realize how detrimental it is for us to be under a poverty program. We, who gave the world civilization, we the wealthiest people on earth who have been robbed of all of our birthright, our inheritance." *Id.*

Finally, what one might call the “pre-modern” reparations movement peaked in 1969 when former civil rights activist James Forman stunned the nation by interrupting services at New York City’s prestigious Riverside Church to demand that churches and synagogues pay half a billion dollars in racial reparations. Forman was born in 1928 in Chicago, but was raised primarily by his grandmother on a Mississippi farm.⁹⁷ He returned to Chicago for high school, graduated from Roosevelt College, also in Chicago, and then did graduate work in African affairs at Boston University. Forman’s political interests started early: he was elected student body president at Roosevelt College and headed a delegation to the 1956 National Student Association convention. After school, Forman worked as a reporter for the influential Black newspaper, the *Chicago Defender*, and subsequently taught public school.⁹⁸

Clayborne Carson notes that Forman’s long career as an activist for racial justice in the South began in 1960 when he was teaching in Chicago.⁹⁹ While working on protests and freedom rides, Forman became attracted to SNCC, the Student Nonviolent Coordinating Committee, which was emerging as an influential force in the civil rights struggle. SNCC relied principally on college students to organize rural communities in the Black Belt, adhering to principles of both political consciousness-raising and a commitment to Gandhi’s satyagraha principles of nonviolent protest.¹⁰⁰ In 1961, Forman left Chicago to work at SNCC’s national headquarters in Atlanta. He stayed with SNCC through the life of the organization, becoming one of the most influential and visionary leaders in the struggle for civil rights and Black liberation through the 1960s. As SNCC executive secretary from 1961-1966, Forman was responsible for fund-raising as well as recruiting and directing the staff who provided the institutional infrastructure for the “field operations” of an interracial group of college students and other activists anxious to protest southern racial supremacy.¹⁰¹ Carson credits Forman as central to SNCC’s organizing success, calling him a highly regarded activist and organizer with excellent “administrative skills” and “political sophistication” who believed in strong and disciplined institutions.¹⁰² Subsequently, Forman was a staunch defender of SNCC’s early vision of a non-violent, racially inclusive struggle for racial justice against newer,

⁹⁷ CLAYBORNE CARSON, IN *STRUGGLE: SNCC AND THE BLACK AWAKENING OF THE 1960s*, at 42 (1981).

⁹⁸ *Id.* at 42.

⁹⁹ *Id.* at 42–43. From Chicago, Forman began to contribute to the southern struggle for racial justice, working with an affiliate of CORE (the Congress of Racial Equality) to help Blacks in Tennessee who had been evicted for trying to vote and also joining a group of freedom riders who went to North Carolina to support a local NAACP campaign. *Id.* at 43. After Forman and other demonstrators sought refuge from the mob in a police station, they were arrested for inciting violence. *Id.* He and other demonstrators were found guilty, but received suspended sentences “on condition that they not demonstrate in North Carolina for two years.” *Id.*

¹⁰⁰ *See id.* at 164. SNCC members contrasted their work from that of King and the SCLC. *See id.* As Stokely Carmichael, later chair of SNCC, said in a discussion of whether organizers could carry arms to defend themselves, “We are not King or SCLC. They don’t do the kind of work we do nor do they live in the areas we live in. They don’t ride the highways at night.” *Id.* Forman himself later contrasted United Civil Rights Leadership Council from SNCC, which was “an organization whose workers rarely had more than fifty cents in their pockets, hustled hamburgers to keep going, and wore overalls as a matter of course.” *Id.* at 107.

¹⁰¹ *Id.* at 43. Carson notes Forman “grasped the opportunity to realize his dream of building an organization that would sustain the idealism of young blacks rather than stifle it with bureaucratic constraints and concern for respectability.” *Id.* at 43.

¹⁰² *See, e.g., id.* at 235.

more radical and nationalist members, such as Stokely Carmichael and H. Rap Brown.¹⁰³ Forman stayed with SNCC from its origins as a force for organizing rural southern Black communities as it evolved a broader agenda of racial justice in the mid-1960s through its tentative efforts to align with the Black Panther Party in late 1967 and early 1968. After on-going conflicts over the ideological future of SNCC, in the summer of 1969, the group decided to drop “Nonviolent” from its name, and instead became the Student National Coordinating Committee. After the last staff meeting of the old SNCC, Forman resigned.¹⁰⁴

Throughout the 1960s, Forman had a complicated relationship with both the existing civil rights leadership, as well as the Black Power movement. Carson reports that Forman wanted to challenge King and SCLC’s (Southern Christian Leadership Conference) dominance of the civil rights leadership. Forman and other SNCC staffers believed that protest should function as a tool not only to achieve Black rights but also to radicalize the college students and other activists who came to work with SNCC.¹⁰⁵ However, Forman also remained skeptical of the emerging Black Power ideology, and particularly of Black nationalists who endorsed separate institutions or a separate state for Black Americans. He rejected the exclusion of class analysis by some Black Power activists, remaining an adamant defender of SNCC’s racial inclusiveness. (Indeed, some fellow SNCC staff found him elitist because Forman believed that northern Blacks and whites should lead SNCC, rather than Blacks from the area under activism, the South, and especially the Black Belt.¹⁰⁶) Other ideology became apparent in Forman’s work within SNCC. He was adamant about the need for strong institutions and leaned toward the more authoritarian side of the SNCC leadership. However, he remained ambivalent about who should comprise the actual leadership. He was similarly ambivalent whether the college students or the SNCC staff should control the organization’s direction.¹⁰⁷ By

¹⁰³ *Id.* at 81. Following a Mississippi arrest, “Forman explained that the imprisonment of the civil rights workers would ‘dramatize to the nation and to the world that the black man does not even have the right to try to be an American citizen in some parts of our so-called democracy.’” *Id.* On the other hand, Forman could be militant. When police responded to a nonviolent protest with violence, Forman later said, “If we can’t sit at the table of democracy, then we’ll knock the fucking legs off.” *Id.* at 160. Carson reports Forman immediately regretted the strong language. *Id.*

¹⁰⁴ *Id.* at 295.

¹⁰⁵ *See, e.g.,* DENNIS C. DICKERSON, *MILITANT MEDIATOR: WHITNEY M. YOUNG, JR.* 168, 181, 221–22, 269 (1998) (discussing how Forman valued contacts of National Urban League’s Whitney Young and approached him to fund scholarships, but clashed with Young over SNCC’s rhetoric and openness to Communism).

¹⁰⁶ CARSON, *supra* note 97, at 139. On the other hand, Forman defended Fannie Lou Hamer when some SNCC staffers dismissed her as not at their “level of development.” *Id.* at 240.

¹⁰⁷ *Id.* at 145.

Forman proposed that those at the retreat take over the functions of the Coordinating Committee, placing control directly in the hands of the full-time staff. This recommendation, which reflected a change that was already underway, acknowledged that the group was no longer a coordinating body for campus-based organizations but instead a group of professional organizers.

Id. at 145. Forman criticized some staffers who deferred to local Mississippians saying they suffered from “an ailment known as local-people-itis, the romanticization of poor Mississippians. This carried with it the idea that local people could do no wrong; that no one, especially somebody from outside the community, should initiate any kind of action or assume any form of leadership.” *Id.* at 156. “Forman’s belief that revolutionary movements require strong institutions was an outgrowth of an ideological tendency that always conflicted with the deeply rooted belief of many SNCC workers that their role was to stimulate social struggles rather than provide institutionalized leadership for them.” *Id.* at 303.

the mid-1960s Forman's politics had moved solidly to the left; he endorsed SNCC's "open association" with the Communist Party, which also invited surveillance, harassment, and infiltration by federal and local authorities.¹⁰⁸ Later, he also embraced the socialist dimensions of Third World revolutionary struggle, which some Black revolutionaries tended to dismiss.¹⁰⁹ In the end, Forman endorsed the concept of a Black vanguard that would build the "strong institutions required for revolutionary struggle."

Like many Black activists of his generation, Forman started in protest politics and moved to revolutionary ones, in the process shifting his emphasis from civil rights to radical change. He remained an advocate of interracial organizing, but began to emphasize economic rights and structural revolution more and more. This evolution also had implications for his relationship to SNCC. "[D]riven by his awareness both of SNCC's accomplishments as a civil rights group and its limitations as a revolutionary organization," he came to have some doubts about SNCC as a platform for his evolving political ideology.¹¹⁰ It was in this context that Forman turned to reparations, which many denominate as the rhetorical high point in reparations activism.

In spring 1969, Forman had been invited to speak at the Black Economic Development Conference (BEDC), organized by the Interreligious Foundation for Community Organization (IFCO), in Detroit. The IFCO "was established by Protestant Church organizations to fund reform projects in minority communities."¹¹¹ Historian Robin Kelley notes that "Forman and activists he had met in the Detroit-based League of Revolutionary Black Workers . . . decided to take over what would have been a liberal community development conference. They succeeded, positioning six League members on the BEDC steering committee and creating what was essentially a black socialist agenda."¹¹² Hence, on May 4, 1969, speaking for the Black Economic Development Conference, Forman disrupted religious services at Riverside Church in New York to read *The Black Manifesto*, which charged American churches and synagogues with historic and on-going collaboration in global racism and colonialism, starting with the slave trade, and demanded half a million dollars in reparations.¹¹³ (Forman later increased the call to \$3 billion dollars.¹¹⁴) Basing his initial figure on an average \$15 per Black person, Forman was specific in his demands, calling for: funding of a southern land

¹⁰⁸ *Id.* at 270; *see also*, MANNING MARABLE, RACE, REFORM AND REBELLION: THE SECOND RECONSTRUCTION AND BEYOND IN BLACK AMERICA, 1945–2006, at 67, 73 (2007) (describing how Forman encouraged SNCC members to engage with socialism, Cuban revolution, and African liberations struggles and how he traveled across Africa with SNCC delegation).

¹⁰⁹ CARSON, *supra* note 97, at 270.

¹¹⁰ *Id.* at 303. Forman said, "We must organize and learn from black workers, constantly summarize our total experiences, discover laws of revolution in the United States, unite with sincere anti-imperialist forces and always give class leadership, resting ourselves in the particular historical forces that have shaped our people." *Id.*

¹¹¹ *Id.* at 294.

¹¹² Kelley, *supra* note 4, at 211.

¹¹³ *Id.* at 211. The initial *Manifesto* called for reparations only from churches; synagogues were added later. *Id.* Rhonda Magee notes that Forman had initially introduced the *Manifesto* to a gathering of Black leaders on April 26. Rhonda V. Magee, *The Master's Tools, from the Bottom Up: Responses to African-American Reparations Theory in Mainstream and Outsider Remedies Discourse*, 79 VA. L. REV. 863, 883 (1993).

¹¹⁴ *See* James Forman, *Control, Conflict and Change: The Underlying Concepts*, in BLACK MANIFESTO: RELIGION, RACISM, AND REPARATIONS 34, 50 (Robert S. Lecky & H. Elliott Wright eds., 1969).

bank; four publishing houses and television networks to generate jobs and capital, as well as to counter racist media representations; a research institute; a training center; both welfare and labor organizing; an International Black Appeal to do fundraising and anti-defamation work; and a Black university.¹¹⁵

Not surprisingly, *The Black Manifesto*'s charges offended many religious communities, including some Black ones.¹¹⁶ Yet, some religious institutions took up Forman's challenge. Riverside's own minister later stated, "it is just and reasonable that amends be made by many institutions in society including, and perhaps especially, the church..." and "funds earmarked for the 'disadvantaged' as 'restitution' and 'penance.'"¹¹⁷ In addition, in 1970, the Philadelphia Episcopal diocese created a half million dollar Restitution Fund that supported Black community development organizations and scholarships, and the United Methodists set aside \$1.3 million for "economic empowerment of black people."¹¹⁸ Ultimately, religious organizations distributed over \$2 million to various Black organizations, although most declined to give money directly to Forman's group.¹¹⁹

Unlike Callie House and Audley Moore, Forman did not have a thirty year commitment to organizing for reparations or developing a mass movement as he had with the rural southern civil rights struggle. But by some measures, Forman has been the most successful advocate for widespread Black reparations.¹²⁰ While reparations had long been discussed within radical Black thought, Forman succeeded in bringing national and

¹¹⁵ See *National Black Economic Development Conference (1969): The Black Manifesto*, in REDRESS FOR HISTORICAL INJUSTICES IN THE UNITED STATES: ON REPARATIONS FOR SLAVERY, JIM CROW, AND THEIR LEGACIES, *supra* note 4, at 593, 593–99, for the full text of the Black Manifesto.

¹¹⁶ See SUGRUE, *supra* note 83, at 436–39; Jerry K. Frye, *The "Black Manifesto" and the Tactic of Objectification*, 5 J. BLACK STUD. 65, 69–70 (1974).

¹¹⁷ SUGRUE, *supra* note 83, at 436.

¹¹⁸ *Id.* at 439; see also Frye, *supra* note 116, at 68–69. Economist Sandy Darity notes that the publisher of the Review of Black Political Economy, the Black Economic Research Center, received its start from these funds. Darity, *supra* note 17, at 2317. The influential Review is still published, although now under the auspices of the National Economic Association, the professional organization of black economist. *Id.*

¹¹⁹ See SUGRUE, *supra* note 83, at 439. With regard to Forman's own organization, Thomas Sugrue notes that "[b]y 1972, [the Manifesto] had raised just over three thousand dollars, most of which went to Detroit's radical Black Star Press." *Id.* Compare Kelley, *supra* note 4, at 213 (finding \$1 million was given to the IFCO "which eventually withdrew its support for the *Black Manifesto*" and that the BEDC itself received around \$300,000 "most of [which] was parceled out to other movements."), with CARSON, *supra* note 97, at 295 ("Forman later wrote of his dismay that little of this money went to the group that started the campaign, the Black Economic Development Conference. He claimed that 'greedy black churchmen' diverted money for their own programs."). While differing on the amount, all agree that the money that did go to the BEDC went primarily to establish Black Star publications, "which distributed black militant writings, including several by Forman." *Id.* at 295 (footnote omitted).

¹²⁰ Two more recent efforts to obtain reparations for Black Americans were initiated by community activists in Rosewood, Florida and Tulsa, Oklahoma. Rather than seeking reparations for a panoply of injuries caused to Black Americans in Florida due to their enslavement and the vestiges of slavery, these communities (and in the case of Tulsa, the subsequent litigation) focused a narrow claims for reparations for destruction of their communities by mobs of whites in and subsequent injuries caused to African descendants in these communities and their immediate descendants. See generally Kenneth B. Nunn, *Rosewood*, in SORRY, *supra* note 4, at 435 (discussing the legislatively granted reparations given to Black Americans and other groups of color due to the destruction of Rosewood, Florida in 1923); Charles J. Ogletree, Jr., *Tulsa Reparations: The Survivors' Story*, 24 B.C. THIRD WORLD L.J. 13, 17–19 (2004) (discussing claims for reparations by survivors and descendants of those injured in destruction of Greenwood District in Tulsa, Oklahoma in 1921).

mainstream attention to reparations. In addition, the *Black Manifesto* was a catalyst for mainstream religious institutions to actually distribute funds, whether they denominated them as reparations or otherwise. Some of Forman's fellow leftists criticized him, disparaging his tactics or the paltry sum he had demanded. Still, while Forman did not work with the grassroots community in his reparations activism, historian Robin Kelley lauds him, saying "The *Black Manifesto* . . . was the first systematic, fully elaborated plan for reparations to emerge from the black freedom movement."¹²¹ In addition, because of his tactics, Forman "brought reparations to national attention."¹²² Forman himself seemed to have an instrumental view of reparations:

Reparations did not represent any kind of long-range goal in our minds, but an intermediate step on the path to liberation. We saw it as a politically correct step, for the concept of reparation reflected the need to adjust past wrongs-to compensate for the enslavement of black people by Christians and their subsequent exploitation by Christians and Jews in the United States. Our demands . . . would not merely involve money but would be a call for revolutionary action, a Manifesto that spoke of the human misery of black people under capitalism and imperialism, and pointed the way to ending those conditions.¹²³

Thomas Sgrue contends that while Forman's contemporaries disagreed with his tactics, he had been strategic. "He . . . knew that liberal white religious organizations had funded civil rights groups and that many, especially in the North, were sympathetic to black radical demands" and that the Riverside congregation was particularly susceptible.¹²⁴

4. Other Reparations Activists

House, Moore, and Forman were not alone in the history of reparations activism. Henry McNeal Turner, a bishop in the African Methodist Episcopal Church and leading voice for Black emigration in the 1890s, called for \$40 billion in reparations for "the free service African Americans had provided the United States for two hundred years."¹²⁵ During the mid-twentieth century, almost every significant Black radical organization

¹²¹ Kelley, *supra* note 4, at 211.

¹²² SUGRUE, *supra* note 83, at 435. Kelley concurs, "If bringing the issue of reparations to a national audience was one of the goals of the *Black Manifesto*, it proved to be a stunning success. During the early 1970s, articles and books on reparations were everywhere." Kelley, *supra* note 4, at 213. Al Brophy notes that Forman drew the attention of Boris Bittker, the Yale Law tax professor who was inspired to write the classic, *The Case for Black Reparations*. REPARATIONS, *supra* note 3, at 38.

¹²³ Kelley, *supra* note 4, at 213.

¹²⁴ SUGRUE, *supra* note 83, at 436 (contending that Forman targeted Riverside because of its progressive congregation); *see also* ROBERT H. BRISBANE, BLACK ACTIVISM: RACIAL REVOLUTION IN THE UNITED STATES 1954–1970, at 129–32, 185–91 (1974). Kelley has a different, more straightforward interpretation of Forman's decision to target religious institutions: "That IFCO was a major Protestant institution only partly explains why Forman targeted churches. His primary reason was that white religious institutions participated in and benefited from racist and capitalist exploitation of black people." Kelley, *supra* note 4, at 211; *see also*, Frye, *supra* note 116, at 67 (contending Forman borrowed concept in some part of King's earlier call for religious institutions to contribute to his "Economic Bill of Rights for the Disadvantaged").

¹²⁵ Robert Johnson, Jr., *Repatriation as Reparations for Slavery and Jim Crow*, in REDRESS FOR HISTORICAL INJUSTICES IN THE UNITED STATES: ON REPARATIONS FOR SLAVERY, JIM CROW, AND THEIR LEGACIES, *supra* note 4, at 402, 405.

endorsed reparations at some point.¹²⁶ Economist Sandy Darity notes that “the subject of reparations was a major component of black nationalist rhetoric during the 1950s and 1960s.”¹²⁷ At various points the Nation of Islam, Black Panther Party, Republic of New Afrika, National Black United Front, and National Association of Black Social Workers all endorsed Black reparations.¹²⁸ Indeed, it is fair to say that reparations is a crucial component in Black nationalist thought. In addition, individual leaders in the struggle for racial equality, as diverse as Frederick Douglass, Malcolm X, and Whitney Young, also at times have supported reparations.¹²⁹ Finally, although neither called explicitly for reparations, scholars have included pan-Africanists Marcus Garvey and W.E.B. Du Bois as part of the reparations tradition. Several view Garvey’s beliefs in repatriation and self-determination as reparations activism.¹³⁰ And, although W.E.B. Du Bois himself rejected the idea of reparations, political theorists Lawrie Balfour and Reiland Rabaka have both contended that he was an early architect of a philosophy of reparations, linking it to Black political and economic self-determination.¹³¹ In sum, reparations advocacy has been part of a long-standing alternative Black political tradition.¹³²

C. Summary

¹²⁶ See Biondi, *supra* note 4, at 256–57, 262; Darity, *supra* note 17, at 2316; Kelley, *supra* note 4, at 210; Yusuf Nuruddin, *The Promises and Pitfalls of Reparations*, in REDRESS FOR HISTORICAL INJUSTICES IN THE UNITED STATES: ON REPARATIONS FOR SLAVERY, JIM CROW, AND THEIR LEGACIES, *supra* note 4, at 379, 437; SUGRUE, *supra* note 83, at 377.

¹²⁷ Darity, *supra* note 17, at 2316.

¹²⁸ See, e.g., Kelley, *supra* note 4, at 210–11, 214; REDRESS FOR HISTORICAL INJUSTICES IN THE UNITED STATES: ON REPARATIONS FOR SLAVERY, JIM CROW, AND THEIR LEGACIES, *supra* note 4, at app. 560–636 (providing examples of organizations’ documents in support of reparations); SUGRUE, *supra* note 83, at 434–35.

¹²⁹ See, e.g., BERRY, *supra* note 4, at 38–39, 179, 238–39; see also SUGRUE, *supra* note 83, at 272–74.

¹³⁰ Marcus Garvey was a Jamaican national who emigrated to the United States and started the United Negro Improvement Association, which advocated for a Black Pan-Africanist consciousness. Scholars such as Al Brophy and Mary Frances Berry contend that Garvey was “the twentieth century’s greatest advocate for human rights, equal rights and reparations for Africa” and that the UNIA “advanced the reparations cause.” REPARATIONS, *supra* note 3, at 34. However, this seems to be a misconception based on several members of the UNIA being strong voices for reparations, most notably Queen Mother Audley Moore. While the UNIA may have welcomed reparations activists, and served as a sort of training ground for others, neither the UNIA goals nor Garvey’s own speeches mention reparations. See *id.*; BERRY, *supra* note 4, at 231. But see Kelley, *supra* note 4, at 209 (“The Garvey movement condemned Europe’s seizure of Africa and its wealth, including its people, as an act of theft, all of which the UNIA vowed to ‘reclaim,’ but it made no direct request for reparations.”). Some, such as Robert Johnson, Jr., contend that calls for repatriation should be considered a form of “self-help” reparations. Johnson, *supra* note 125, at 402. If this is the case, then certainly Garvey would qualify as a leading and influential reparations activist. *Id.*; see also E. DAVID CRONON, BLACK MOSES: THE STORY OF MARCUS GARVEY AND THE UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION (1969); MARCUS GARVEY & AMY JACQUES GARVEY, THE PHILOSOPHY AND OPINIONS OF MARCUS GARVEY (1967); COLIN GRANT, NEGRO WITH A HAT: THE RISE AND FALL OF MARCUS GARVEY AND HIS DREAM OF MOTHER AFRICA (2008).

¹³¹ Rabaka focuses primarily on Du Bois’s pan-African philosophy and the petitions he presented to the League of Nations and later the United Nations Human Rights Commission, contending these comprise an “overlooked archive for modern reparations arguments.” RABAKA, *supra* note 6. Balfour focuses more so on Du Bois’s classic texts, *The Souls of Black Folks* and *Black Reconstruction*, to derive three lines of argument that support modern calls for reparations. Balfour, *supra* note 25, at 39–43.

¹³² See also Magee, *supra* note 113 (characterizing reparations as a viable alternative to conventional racial remedies).

While others supported reparations, this Essay contends that Callie House, Queen Mother Audley Moore, and James Forman stand out in reparations activism. House devoted much of her adult life to seeking redress for ex-slaves, built an institution to execute her vision, and mobilized close to 300,000 individuals to actually join the movement and as many as 600,000 to support it in some way. Moore had a more diverse activism portfolio. Yet, Black reparations was a significant part of her work, and through the Reparations Committee of Descendants of United States Slaves, she gained a million signatures in support of the cause. In the 1950s and early 1960s, before many Black Power organizations were formed and took up the reparations cause, Moore was one of the people primarily responsible for keeping redress for slavery part of Black political debate. Finally, Forman's rhetorical skills and conceptual vision brought reparations beyond Black radical thought and into the mainstream, in many ways launching the "modern" reparations movement. In addition, his tactics of radical disruption and targeting religious institutions actually led to some voluntary redistribution in the name of racial justice. In the end, all three developed institutions, however short-lived, that dedicated themselves solely to seeking redress for slavery.¹³³

In addition to developing these institutions, all three of these individuals conceived reparations as distinct from broader struggles for racial justice, equality, and human rights. Reparations seeks redress and compensation for the injuries, harms, and abuses to enslaved people and their descendants. House and the Ex-Slave Pension Association exemplified this approach in that they sought pensions in the language of redress and restitution for uncompensated enslaved labor. Moore and Forman followed in this tradition, and unlike other racial leaders, conceived redistribution not as a purely moral claim, but as an entitlement for wrongs done. Increasingly, scholars and activists have embraced a broad definition of reparations as commensurate with anti-racist measures and economic justice for Black people. Yet, however well intentioned, equating reparations with anti-racist measures, rather than giving it a precise definition, runs the risk of "reparations" becoming synonymous with "racial equality."

II. REPARATIONS AS A SOCIAL MOVEMENT

As Section I demonstrates, "reparations" has a history much more complex than a mere legal claim. Reparations activism has comprised a rich social movement that parallels, but is distinct from, civil rights history. It is a distinct strain in Black struggles for racial justice with its own actors and institutions. As Doug McAdam explains, "the defining quality of movements . . . is the mobilization of previously unorganized or non-political challengers."¹³⁴ Social movements emerge from people who are feeling

¹³³ Although, as noted, the Ex-Slave Pension Association had a dual agenda of seeking redress and providing mutual aid. See *supra* notes 51–52 and accompanying text.

¹³⁴ DOUG MCADAM, *POLITICAL PROCESS AND THE DEVELOPMENT OF BLACK INSURGENCY, 1930–1970*, at 15 (2d ed. 1999) (discussing structural roots of southern civil rights movement) [hereinafter *POLITICAL PROCESS*]. See generally *FROM CONTENTION TO DEMOCRACY* (Marco G. Giugni et al. eds., 1998); *FRONTIERS IN SOCIAL MOVEMENT THEORY* (Aldon D. Morris & Carol McClurg Mueller eds., 1992); DOUG MCADAM, *READINGS IN SOCIAL MOVEMENTS: ORIGINS, DYNAMICS, AND OUTCOMES* (2d ed. 2009); ALDON D. MORRIS, *THE ORIGINS OF THE CIVIL RIGHTS MOVEMENT: BLACK COMMUNITIES ORGANIZING FOR*

simultaneously aggrieved and optimistic.¹³⁵ Sidney Tarrow elaborates: “Sustaining collective action in interaction with powerful opponents marks the social movement off from the earlier forms of contention that preceded it in history and still accompany it today.”¹³⁶ Social movements theory thus focuses on collective political insurgency to understand how it affects not only the institutions under attack but also the movement actors themselves. In other words, how do movement activists develop “oppositional consciousness,” mobilize resources, and both adapt to and change cultural meanings and norms.¹³⁷ Conceiving Black reparations activism in this way, as a social movement, focuses scholarly attention on the movement actors and also suggests several insights that have been under-explored in the legal literature.

Historians have long noted tensions between elite and non-elite Blacks.¹³⁸ Debates between Garvey and his critics and also between Black Power advocates and integrationists have both been understood in these terms. The reparations debate also incorporated these tensions. First, the history of reparations activism reveals a different set of class dynamics at work than those that have been discussed in most civil rights histories. Scholars of social movements for racial justice have shown how Blacks of different classes struggled to achieve distinct visions of racial justice within the civil rights movements. For instance, Aldon Morris, Evelyn Brooks-Higginbotham, and Derrick Bell have shown how elite and non-elite Blacks differed over goals and strategy, at times leading to deep-seated tensions and conflicts. Derrick Bell’s classic, *Serving Two Masters*, takes up this conflict.¹³⁹ He uses the *Brown v. Board of Education* litigation to show how Blacks agreed that the existing conditions of segregation were untenable and racist but disagreed over how to remedy them. Many Blacks had an immediate goal of achieving decent education for their children. The elite lawyers and others, though, had integration as a separate and distinct goal. Bell contends,

The hard-line position of established civil rights groups on school desegregation is explained in part by pragmatic considerations. These organizations are supported by middle class blacks and whites who believe fervently in integration. At their socioeconomic level, integration has worked well, and they are certain that once whites and blacks at lower economic levels are successfully mixed in

CHANGE (1984); OPPOSITIONAL CONSCIOUSNESS, *supra* note 8; SIDNEY TARROW, POWER IN MOVEMENT: SOCIAL MOVEMENTS AND CONTENTIOUS POLITICS (2d ed. 1998).

¹³⁵ POLITICAL PROCESS, *supra* note 134, at x.

¹³⁶ TARROW, *supra* note 134, at 7.

¹³⁷ Social movement scholarship has evolved from a theory of grievance and apolitical collective behavior to consideration of how rational choice, resource mobilization, political process, meaning making (framing), and cultural variables influence organized opposition to state power. See, e.g., FRONTIERS IN SOCIAL MOVEMENT THEORY, *supra* note 134 (developing social psychology framework to complement structural/political frameworks of resource mobilization); POLITICAL PROCESS, *supra* note 134 (positing political process model of understanding social movements); MORRIS, *supra* note 134 (urging cultural factors as important to consciousness raising); OPPOSITIONAL CONSCIOUSNESS, *supra* note 8 (how social movement actors development “oppositional consciousness”); SOCIAL MOVEMENTS AND CULTURE (Hank Johnston & Bert Klandermans eds., 1995) (providing common framework for integrating cultural variables in study of social movements); TARROW, *supra* note 134 (discussing role of culture in new social movement scholarship).

¹³⁸ See, e.g., E. FRANKLIN FRAZIER, BLACK BOURGEOISIE (1957); CARTER G. WOODSON, THE MIS-EDUCATION OF THE NEGRO (The Book Tree 2006) (1933).

¹³⁹ Derrick A. Bell, Jr., *Serving Two masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976).

the schools, integration also will work well at those levels. Many of these supporters either reject or fail to understand suggestions that alternatives to integrated schools should be considered, particularly in majority-black districts.¹⁴⁰ Similarly, Aldon Morris contends that after southern terrorists targeted and marginalized the NAACP, it opened up spaces for more mass, grassroots movements of Blacks who might not have been able to participate in the NAACP's elite vision.¹⁴¹ Evelyn Brooks-Higginbotham has made an analogous argument in the context of the Black women's club movement. She shows how middle-class and elite Black women consciously embraced and adopted notions of gender respectability associated with their white counterparts as a strategy for political activism. In contrast, non-elite Black women often embraced distinct notions of activism. These women often feared that elites prioritized preserving their own class position and influence to the detriment of the overall movement. In essence, elite and non-elite Blacks differed over not only the substance of racial justice, but also over acceptable strategies for achieving it.

Like other Black social movements, reparations activism also had its own class dynamics. Blacks of all classes participated in the classic civil rights struggle. In contrast, until the last decade, elite and middle-class Blacks overwhelmingly rejected any common cause with the reparations movement. In fact, they actively derided and dismissed it, publicly distancing themselves.

Callie House and Queen Mother Audley Moore are both emblematic of reparations activists. Both came from families that struggled for daily survival. House in particular worked as a washwoman and seamstress, which, as noted above, was the labor to which Black women of her generation were confined. James Forman came from a similar background, but achieved a college education, then joined the ranks of the Black middle-class as a teacher. Yet Forman embraced a working-class consciousness, eventually co-founding the Black Worker's Congress, a Marxist group that sought to mobilize Black labor.¹⁴² In the end, all three viewed reparations as a mechanism of economic justice for vast classes of economically disfranchised Blacks. Importantly, House and Moore also viewed *reparations activism* as a tool to empower disfranchised Black people. Both spent much of their lives organizing disempowered Black people. From his successes with SNCC's rural southern projects, certainly Forman understood and endorsed activism as not only in the service of an end goal, but also as a way to develop political consciousness among the organizers. Indeed, Forman has been hailed as one of the great organizers of the twentieth century. Yet, his tactics in seeking reparations rejected the organizing approach that had so distinguished him in SNCC, instead embodying his growing belief in a Black vanguard.¹⁴³

¹⁴⁰ *Id.* at 470, 489.

¹⁴¹ MORRIS, *supra* note 134, at 46; *see also* Lori G. Waite, *Divided Consciousness: The Impact of Black Elite Consciousness on the 1966 Chicago Freedom Movement*, in *OPPOSITIONAL CONSCIOUSNESS*, *supra* note 8, at 170.

¹⁴² Forman majored in economics and management at Roosevelt College. In the 1970s, after leaving SNCC, he earned a master's degree from Cornell University and a PhD from Union Institute in Ohio. *See* The JBHE Foundation, *Former Black Panthers Who Have Turned to Higher Education*, 21 *J. BLACKS HIGHER EDUC.* 62, 63 (1998).

¹⁴³ In fact, Moore criticized Forman for both his tactics and his substantive conception of reparations. SUGRUE, *supra* note 83, at 438; *see also* Kelley, *supra* note 4, at 211, 212 (claiming Forman viewed reparations as "seed money to build a new revolutionary movement and to strengthen black political and

Other Black organizations dedicated to mobilizing non-elite Blacks similarly have endorsed reparations as part of broader agendas. According to Martha Biondi, “Reparations has long been a goal for a range of U.S. black nationalist groups, usually in concert with the quest for territory and political self-determination.”¹⁴⁴ Robin Kelley notes that every radical Black organization in the 1950s and 1960s endorsed reparations as part of their constitutions or public platforms.¹⁴⁵ In contrast, the elite-dominated mainstream racial justice organizations kept a careful distance. Although all major civil rights organizations have now endorsed H.R. 40, the bill Congressman John Conyers first introduced in 1989 to study reparations, Lawrie Balfour notes that “mainstream civil rights organizations once kept their distance” from reparations.¹⁴⁶ Tellingly, even SNCC did not endorse Forman’s Black Manifesto, although he was still an officer at the time.¹⁴⁷

Some Black elites went beyond indifference or ignoring reparations calls to actively undermining them. For instance, not only whites and government officials but also Black elites ridiculed House and her activism, preferring to support the club movements and related efforts by Black middle-class women to resist racism through what Evelyn Brooks Higginbotham calls “racial respectability.”¹⁴⁸ Mary Frances Berry observes that “Mrs. House’s cause to help the poor ex-slaves would seem to have been attractive to progressives, who worked to cure social ills ranging from impure food and drugs to housing for urban immigrants, but wider support remained elusive.”¹⁴⁹ Yet, the three Black Congressmen, each from elite backgrounds, opposed reparations, instead favoring policies furthering conventional civil rights and education.¹⁵⁰ In addition, Berry shows that Black newspapers ignored the Ex-Slave Pension Association, giving it press only when the Association hired Cornelius Jones, a highly regarded and elite trained

economic institutions” and noting that the Black Economic Development Council did propose civil disobedience). Indeed, part of what is fascinating about Forman is that he abandoned the “[c]ontentious collective action” that Sidney Tarrow says is “the basis of social movements” and which had distinguished SNCC in the 1960s civil rights struggle. Tarrow, *supra* note 134, at 3.

¹⁴⁴ Biondi, *supra* note 4, at 257.

¹⁴⁵ Kelley, *supra* note 4, at 210; *see also* SUGRUE, *supra* note 83, at 377.

¹⁴⁶ Balfour, *supra* note 25, at 40; *see also* Biondi, *supra* note 4, at 262.

¹⁴⁷ CARSON, *supra* note 97, at 295.

¹⁴⁸ *See generally* BROOKS-HIGGINBOTHAM, *supra* note 84.

Respectability demanded that every individual in the black community assume responsibility for behavioral self-regulation and self-improvement along moral, educational, and economic lines. The goal was to distance oneself as far as possible from images perpetuated by racist stereotype. Individual behavior, the Black Baptist women contended, determined the collective fate of African Americans.

Id. at 196. “From the perspective of the Baptist women and others who espoused the importance of ‘manners and morals,’ the concept of respectability signified self-esteem, racial pride, and something more. It also signified the search for common ground on which to live as Americans with Americans of other racial and ethnic backgrounds.” *Id.* at 188.

Baptist women asserted that “proper” and “respectable” behavior proved blacks worthy of equal civil and political rights and made it possible for them to demand what they can not hope to demand if they are boisterous and unclean. Conversely, the politics of respectability equated nonconformity with the cause of racial inequality and injustice.

Id. at 203.

¹⁴⁹ BERRY, *supra* note 4, at 143. “Nashville’s better-off African Americans put some resources into helping the poor, but they showed more concern for civil rights and opportunities than for addressing poverty.” *Id.* at 65.

¹⁵⁰ *Id.* at 39–42.

Black lawyer to bring the cotton tax suit. (In fact, Berry shows that Jones was chosen in part to gain credibility and support of Black elites.¹⁵¹) During the resurgence of reparations activism, in the 1960s, civil rights leaders seemed to line up to dismiss reparations. Bayard Rustin, the head of the A. Philip Randolph Institute and organizer of the 1963 March on Washington, proclaimed, “The idea of reparations is a ridiculous idea. If my great-grandfather picked cotton for 50 years, then he may deserve some money, but he’s dead and gone and nobody owes me anything.”¹⁵² Roy Wilkins, executive secretary and then executive director of the NAACP, stated “giving money to blacks who are without credentials or competence would show contempt for black Americans generally and undercut those working through the democratic process.”¹⁵³ Black church leaders publicly opposed Forman’s Black Manifesto, which sought reparations from religious institutions. The influential Black newspaper, *The Amsterdam Times*, joined in this opposition.¹⁵⁴ In the end, conflicts among Blacks over the legitimacy of reparations exemplify a classic tension in the struggle for racial justice: seeking respectability and uplift versus self-determination and revolutionary politics.

Second, conceiving reparations as a social movement also sheds light on the complex visions of law in the Black community. Much Black radical thought rejects the United States legal system. In its strongest form, the argument rejects legal institutions as illegitimate or hegemonic; in its weaker form, it regards them as impotent against greater structural forces of capitalism and racial oppression. Yet much of the pre-modern reparations movement turned to law and legal institutions for redress. The Ex-Slave Pension Association repeatedly petitioned Congress to pass legislation, later turning to the courts, with the conscious goal of obtaining a Supreme Court ruling. Queen Mother Audley Moore and the Reparations Committee of Descendants of United States Slaves presented their petition to the Executive branch during the Kennedy Administration. In fact, recall that Moore used the *Methodist Encyclopedia* “one hundred years” statute of limitations as a mobilizing call for Blacks to join the reparations movement. Forman’s targeting of religious institutions in lieu of seeking legal remedies from courts or government institutions is the stark exception. He may have viewed religious institutions as more morally vulnerable than political ones to reparations demands. It is worth noting again, Forman’s call to religious institutions was the most successful Black reparations effort before the modern movement.

What, then, should be made of the reparations movement’s relationship to law? Does activists’ surprisingly consistent turn to legislation and litigation suggest an

¹⁵¹ *Id.* at 175, 186. Berry also characterizes the lawyer’s litigation strategy as “avoid[ing] novel arguments and any focus on Jim Crow, the rights of blacks, or the horrors of slavery. Instead, he strategically formulated the suit in sterile, formal legal terms common in the period.” *Id.* at 179.

¹⁵² Frye, *supra* note 116, at 69.

¹⁵³ *Id.* at 70.

¹⁵⁴ *Id.* at 70; SUGRUE, *supra* note 83, at 438; *see also* BERRY, *supra* note 4, at 230 (“[T]he poorest African Americans have been the most consistent supporters of reparations for slavery. The black middle class has been mostly critical of the effort.”); Eric K. Yamamoto et al., *American Racial Justice on Trial—Again: African American Reparations, Human Rights, and the War on Terror*, 101 MICH. L. REV. 1269, 1293 (2003) (describing Forman’s anger at the lack of support). Lee Harris concurs that the Black mainstream has been mainly leery of reparations and its apparent politics of confrontation. Harris, *supra* note 10, at 411 n.10.

underlying faith in the legal system?¹⁵⁵ Is this a break with “conventional” Black radical thought? Or, perhaps worst of all, is this a naïve belief that they would somehow succeed? This Essay contends not. Of course, some litigants want to “win”—to achieve a desired outcome. But scholars have supplemented this transparent interpretation with alternative understandings of why people turn to courts and law for relief.¹⁵⁶

Bringing litigation can be a way of mobilizing, sustaining, or publicizing a larger extra-legal and social battle, inflicting costs on an opponent, or achieving some needed delay in the resolution of an issue. One can see all of this at work in reparations activism, particularly in the Ex-Slave Pension Association’s sustained battle for redress. House and her fellow pension activists wanted redress for slavery. Former slaves, particularly aging ones, had an immediate, pressing material need and the Association tried to get legislation passed to help them. By the same token, confronted by repeated legislative blocks, the Association sought relief in the courts not solely to press a legal remedy, but also to publicize their cause. Bringing the litigation finally attracted the attention of mainstream Black organizations, such as the Black press, and the involvement of the elite lawyer Jones and his strategies of “litigation respectability” made the cause a more legitimate and less threatening one for other members of the Black elite. By the same token, the litigation over the much-publicized cotton tax also joined the ex-slave pension movement to the broader public debate about the proper uses of those funds, should they exist. House and the other pension activists posited themselves in the public sphere as legitimate claimants, no less than former Confederates and slaveholders who also sought ownership of the funds.

Finally, the lawsuit put the Treasury Department on the defensive. Berry notes that the Department went on a “public relations offensive,” denying that the funds existed or that the former slaves would have had any right to them if they did exist.¹⁵⁷ While the litigation most likely inflicted only modest financial costs on the government, it did threaten to inflict a different kind of cost—that of legitimacy. In asserting its own “innocence,” the cotton tax litigation forced the Treasury to distance itself from the economics and dynamics of slavery by asserting that “any conflicts were between the slaveholders and the former slaves.”¹⁵⁸ Similarly, the million people who signed Moore’s petition probably did not believe they would receive reparations. Yet, by submitting their petitions to the Kennedy Administration, Moore helped to revitalize the stagnant reparations movement, encouraging the signatories to then become participants in the political process.

In fact, we can see the reparations movement as an alternative Black politics in the face of disfranchisement from formal routes to citizenship or political subjectivity, such as voting. Berry notes that reparations activism provided “a democratic structure in which local people had control and a voice, at a time when blacks were practically

¹⁵⁵ *But see* Balfour, *supra* note 25 (describing Du Bois’s petitions relying on *international* law); notes 290–92 and accompanying text (discussing ANRO putting U.S. on trial in its own court while rejecting legitimacy of U.S. legal system to assess the claim).

¹⁵⁶ *See, e.g.,* MORRIS, *supra* note 134, at 13–14 (discussing the NAACP’s use of courts as an instrument of racial justice); *see also* Jones, *supra* note 9; PENNINGROTH, *supra* note 9.

¹⁵⁷ *See supra* note 3 and accompanying text.

¹⁵⁸ BERRY, *supra* note 4, at 179–80. Berry explains that “Mrs. House saw the courts as responsible for deciding claims of injustice when legislative lobbying failed. . . . [, and] even if the effort failed, it might engender more public understanding of the pensions cause.” *Id.* at 172.

disfranchised” and enabled them to “exercis[e] their citizenship rights to gain a new law at a time when disenfranchisement had closed other avenues for political action.”¹⁵⁹ This Essay does not mean to claim reparations as a utopian form of politics—it was after all limited in its claims and largely unsuccessful. And yet, reparations activism has offered Blacks means to make political claims and conceive of themselves as political actors, in sum, to exercise political subjectivity.

In sum, a turn to law can be one tactic in a longer, more complex social movement. It need not be indicative of a belief in the legitimacy of law or legal institutions. Much has been written on this dynamic in other contexts. Incorporating reparations activism into how we understand the instrumental use of courts and law will shed even more light on both law and the reparations movement.

Third, conceiving reparations as a social movement also reveals differing conceptions of freedom from slavery and Jim Crow, or Black “liberation.” We see this in the varied distinct and disputed material structures reparations activists have called for. As noted at the beginning of Section I, early calls for reparations often cast redress in terms of land. This resonated both with the Lockean notion that Blacks were entitled to the land by virtue of the fact that their labor had created its value and the Jeffersonian vision of the yeoman farmer whose economic independence undergirded his political citizenship.¹⁶⁰ Subsequently, analogizing enslaved labor to military service, Callie House’s pension movement envisioned cash payments to individuals. The goal was to provide subsistence for aging ex-slaves whose labor had never been compensated, and hence who could not support themselves.¹⁶¹ In addition, as noted, some characterize the calls of Bishop Henry McNeal Turner, Marcus Garvey, and others for Black repatriation to Africa as reparations.¹⁶² Finally, from the 1950s into the modern period, reparations calls have taken various forms. Historian Martha Biondi observes: “With northern migration and urbanization, land receded as a primary demand, but the belief that the United States owed a debt to the descendants of enslaved Africans animated twentieth-century black protest and was a much more visible theme in the civil rights/black liberation movement than historical accounts generally acknowledge.”¹⁶³ Still, some groups did continue to call for land redistribution. The 49th State Movement, the Nation of Islam, and later, the Republic of New Afrika and the New Afrikan People’s Organization all contended the government should redistribute land to Blacks to establish a separate nation.¹⁶⁴ Other reparations activists continued to make claims for cash

¹⁵⁹ *Id.* at 51–52, 80.

¹⁶⁰ John Langbein has noted that land was the crucial component of wealth at this time. John H. Langbein, *The Twentieth-Century Revolution in Family Wealth Transmission*, 86 MICH. L. REV. 722, 729 (1988); *see also*, Richard H. Chused, *Married Women’s Property Law: 1800–1850*, 71 GEO. L.J. 1359 (1983) (transformation of married women’s property claims from dower to elective share also reflected devaluation of land compared to other forms of wealth). Of course, following the dominant political thought of the time, this conception is both explicitly and implicitly gendered.

¹⁶¹ *See supra* notes 49–52 and accompanying text.

¹⁶² *See supra* notes 125–32 and accompanying text.

¹⁶³ Biondi, *supra* note 4, at 256–57.

¹⁶⁴ Darity, *supra* note 17, at 2316; 1 ENCYCLOPEDIA OF MINORITIES IN AMERICAN POLITICS: AFRICAN AMERICANS AND ASIAN AMERICANS, *Reparations* 146 (Jeffrey D. Schultz et al. eds, 2000) (“In the 1950s, the Nation of Islam called for the establishment of a separate black state. Under the Nation of Islam’s plan, the United States would supply and maintain the population of the proposed black state for at least 20 to 25 years until it had reached some level of economic and political autonomy.”) [hereinafter ENCYCLOPEDIA].

payments to individuals (Queen Mother Audley Moore) or to build institutions (James Forman). Each of these conceptions reflects a distinct vision of Black liberation and political subjectivity.

Sandy Darity has pointed out that, if awarded, Black reparations could take starkly varied forms, which would affect both their feasibility and their impact.¹⁶⁵ Some activists have viewed reparations as a path to full Black citizenship within the United States. Perhaps most notably, Callie House and the Ex-Slave Pension Association believed that Blacks were entitled to compensation from the government for their contributions to the nation, much as Union veterans had earned their pensions for military service. Following the veteran logic, the nation owed this debt to *individual* Blacks, whose coerced labor had contributed to the country's wealth and power, and the Association's proposed formula envisioned such cash payments to individuals. The Association's vision was that Blacks were entitled to reparations *as Americans* and that the pensions would help them to become full economic as well political citizens.

Other reparations activists reject this view. They instead urge reparations as a route to racial self-determination, or what we might think of as Black nationalism. Black nationalism takes various forms. In its weakest form, Black nationalism contends that racial liberation lies in Blacks ability to determine their own political future. Distinct from conventional civil rights approaches, which demand Black political equality *with whites* and often urge Blacks to exert political power in the electoral and other democratic processes in the United States, Black nationalism emphasizes Black self-determination, or Blacks' ability to shape their own political, economic, and cultural future. In its strongest form, Black nationalism calls for sovereignty for Blacks in the United States, often in the form of a separate nation-state. We find strains of a strong-form Black nationalism in calls for repatriation to an African state; calls for a separate Black homeland within the United States; and even within the Communist Party's Black Belt hypothesis, which many progressive Blacks endorsed in the late 1920s and 1930s.¹⁶⁶ In sum, what distinguishes Black nationalism from other forms of liberatory Black politics is its emphasis on Blacks' ability to determine a collective political future and to remain cognizable as a people. Several strains of reparations activism envision reparations as a path to Black self-determination.¹⁶⁷

¹⁶⁵ See, e.g., William A. Darity, Jr., & D. Frank, *The Economics of Reparations*, 93 AM. ECON. REV. 326 (2003); William A. Darity, Jr., *African American Reparations, Keynes, and the Transfer Problem*, in KEYNES FOR THE 21ST CENTURY: THE CONTINUING RELEVANCE OF THE GENERAL THEORY (Matthew Forstater & L. Randall Wray Palgrave eds., 2008); Darity, *supra* note 17, at 2317. This is also a major theme in Yusuf Nuruddin's work on reparations. Nuruddin contends that now that "[t]he black managerial and professional class, the black working class, and the black lumpen all want reparations . . . it is certain that class contradictions will emerge as the movement becomes more focused on the logistics of implementing reparations." Nuruddin, *supra* note 126, at 381. See also REPARATIONS, *supra* note 3, at 167–79 (detailing different approaches).

¹⁶⁶ ENCYCLOPEDIA, *supra* note 164, at 146; SUGRUE, *supra* note 83. Legal scholar Lee Harris has urged reparations to create a separate Black state. Lee A. Harris, *Political Autonomy as a Form of Reparations to African-Americans*, 29 S.U. L. REV. 25 (2001).

¹⁶⁷ See ROY L. BROOKS, ATONEMENT AND FORGIVENESS: A NEW MODEL FOR BLACK REPARATIONS 2–3 (2004) (reparations is becoming a question of integration versus separation); REPARATIONS, *supra* note 3, at 71 ("Moderate groups saw reparations as part of basic fairness but wanted integration; radical groups saw reparations as part of a separatist movement."); Johnson, *supra* note 125.

On the other hand, Forman's conception of reparations reflected his complex relationship to both the civil rights and Black Power movements. Forman was critical of Black nationalism, "complaining that many black nationalists had become the 'pimps' of black militancy and had 'been the first to jump on the bandwagon of black capitalism.'"¹⁶⁸ Against Stokely Carmichael's characterizations of urban black Americans' as reacting to more of a racial instead class subjugation, Forman was among those who insisted that "class analysis must remain a central aspect of black political strategy."¹⁶⁹ Indeed, Carson quotes Forman: "'A purely skin analysis . . . makes it very difficult to guard against reactionary nationalism.'"¹⁷⁰ Forman's ambivalences are reflected in his reparations approach and vision. As noted earlier, he rejected the grassroots mobilization activism embraced by House and Moore, instead adopting a "vanguard" approach. His vision differed from theirs in other ways as well. He rejected direct payments to individuals, instead calling for distributions to institutions that would put the resources in "the ownership and control of industry in the hands of the black community."¹⁷¹ This was consistent with Forman's increasing embrace of socialism and labor-based politics after leaving SNCC.¹⁷² Forman is thus emblematic of activists who have tied Black reparations to social and economic development against a capitalist grain.

Land claims in particular defy simplistic categorizations. Mid-nineteenth century calls to redistribute land to former slaves viewed it as a path to Black *economic* independence that would then yield *political* citizenship. Yet demands to redistribute land that came a century later, in the 1950s and 1960s, exemplified an explicitly nationalist spirit, a vision of Black liberation as grounded in a separate sovereign homeland within the United States, or what we might call "territorial nationalism."¹⁷³ In perhaps the classic case in modern history, contemporaneous with these calls, "Germany . . . paid reparations to the state of Israel, a redress that resembles the African American case somewhat, since the reparation is not made to actual victims of the Holocaust but to

¹⁶⁸ CARSON, *supra* note 97, at 294. "Forman suggested the black power slogan was not an adequate guide for the future." *Id.* at 235–36.

¹⁶⁹ *Id.* at 265.

¹⁷⁰ *Id.* at 269.

¹⁷¹ Nuruddin, *supra* note 126, at 387. Nuruddin elaborates that given the increased importance of media and control of mass communication "Forman was prescient in demanding black ownership and control of media outlets: publishing houses and TV stations (radio stations should be added to his demand as well)." *Id.* at 388.

¹⁷² After leaving SNCC in June 1969, Forman continued his racial and labor activism, although Carson notes that "[a]fter leaving SNCC Forman had difficulty finding a place in the increasingly variegated black struggles of the 1970s." CARSON, *supra* note 97, at 296. In 1971 he and others in the BEDC founded the Black Workers' Congress, "which advocated workers' control of industry, the economy, and the state, to be brought about through cooperatives, united front groups, neighborhood centers, student organizations, and ultimately a revolutionary party." Kelley, *supra* note 4, at 213. He also was an officer in the League of Revolutionary Black Workers, which was started by dissidents within the United Automobile Workers Union in Detroit. CARSON, *supra* note 97, at 296. Consistent with his emphasis on labor, in his "massive account" of SNCC, *The Making of Black Revolutionaries*, Forman contended "SNCC's decline resulted from its failure to organize black workers 'and put them at the center of decision making' and to 'hold the power it had acquired in the rural South.'" *Id.* Kelley notes the Black Workers Congress was soon reformulated as multiracial Marxist-Leninist and Forman was purged. Kelley, *supra* note 4, at 213.

¹⁷³ See, e.g., Nuruddin, *supra* note 126, at 382 ("Some formulations of reparations are consumer-oriented palliatives while others challenge the very legitimacy of the existing nation-state . . .").

Jews collectively through the state of Israel.”¹⁷⁴ Finally, Forman again put forward a distinct vision: topping the Black Manifesto’s list of demands was a southern land bank, conceived not as territorial nationalism, but a path to restoring political and economic power to the working classes, including the agricultural proletariat.¹⁷⁵

In sum, the reparations movement has incorporated vastly different ideologies, even competing, visions of Black political subjectivity.¹⁷⁶ For some, reparations is a path to full citizenship within the United States; others have rejected this, favoring reparations as a vehicle for Black self-determination. Finally some, like James Forman, appear to view reparations as a strategy for inculcating a more socialist American state. Conceiving reparations as a social movement helps to disaggregate these distinct views and how they relate to broader visions of and strategies for racial justice and liberation. The next Section will consider one major actor in the “modern” reparations movement, the National Coalition of Blacks for Reparations in America, and its role in reparations activism. Thus far, the history of reparations overwhelmingly has been the history of the individuals and institutions described in Section I. Less well-known is the National Coalition of Blacks for Reparations in America, or N’COBRA, and its founders and members. While N’COBRA has not been given significant scholarly attention, a social movements approach foregrounds its contributions. After the energy and activism of the 1960s, beginning with Queen Mother Moore and ending with Forman’s Manifesto, organized reparations activism hit a lull in the 1970s.¹⁷⁷ As the next Section shows, in the 1980s, a diverse group of Black activists formed N’COBRA which continued the tradition of grass roots reparations activism and litigation begun by Callie House close to a century earlier.

III. N’COBRA

In 1987, N’COBRA reincarnated and expanded the popular movement for reparations for, as they put it, “Black people descended from enslaved people or victims of Jim Crow.”¹⁷⁸ In its founding meetings N’COBRA defined mass movement as being one that was inclusive of all strata of the Black community and inclusive of whites supportive of reparations who were willing to work under the leadership of Black people.¹⁷⁹ It did not discuss the role of people of color other than Blacks, although it

¹⁷⁴ Biondi, *supra* note 4, at 259.

¹⁷⁵ Kelly observes, “Because of the explicit anticapitalist vision of the drafters of the *Manifesto*, the land bank was intended especially for ‘people who want to establish cooperative farms but who have no funds.’” Kelly, *supra* note 4, at 212.

¹⁷⁶ See Verdun, *supra* note 15 (contrasting differences between Black and white political consciousness regarding reparations).

¹⁷⁷ The Republic of New Afrika and other organizations continued to work for reparations during this period, but as part of their broader political platforms. See Worrill, *supra* note 89, at 203–04.

¹⁷⁸ Adjoa A. Aiyetoro, *The National Coalition of Blacks for Reparations in America (N’COBRA): Its Creation and Contribution to the Reparations Movement*, in SHOULD AMERICA PAY?: SLAVERY AND THE RAGING DEBATE ON REPARATIONS, *supra* note 3, at 211; NAT’L COAL. OF BLACKS FOR REPARATIONS IN AM., REPARATIONS AND THE NATIONAL COALITION OF BLACKS FOR REPARATIONS IN AMERICA: AN INFORMATION SHEET (2d ed. 2004),

<http://www.ncobra.org/resources/pdf/Information%20Sheet%20Master%20-%20NCOBRA.pdf>.

¹⁷⁹ Aiyetoro, *supra* note 178, at 213–14. N’COBRA decided that rather than being members of N’COBRA, whites should work in parallel formations. Caucasians United for Reparations and Emancipation (CURE)

garnered the support of Japanese Americans active in the movement for Japanese-American redress for internment during World War II and some Native Americans.¹⁸⁰ As described in Section I, a number of organizations with a broad agenda for redressing the crimes against Blacks in the African Diaspora have included reparations as part of their mission, including the Nation of Islam, Republic of New Afrika, National Black United Front, and National Association of Black Social Workers.¹⁸¹ However, prior to the organization of N'COBRA, there were only a few organizations that focused exclusively on reparations for African descendants in the United States. As described above, in the pre-modern period, the Ex-Slave Mutual Relief, Bounty & Pension Association and Queen Mother Moore's Reparations Committee of Descendants of United States Slaves both dedicated themselves almost solely to reparations activism.¹⁸² In the decade prior to N'COBRA's founding, Black activists formed The Black Reparations Commission and the African National Reparations Organization (ANRO).¹⁸³

The Black Reparations Commission was founded in 1978 by Dorothy Benton Lewis and Irving B. Davis to link the national and international movements for reparations for Blacks in the African Diaspora and serve as an umbrella organization for the various reparations demands.¹⁸⁴ ANRO was created in 1982 at a tribunal organized by the African Peoples Socialist Party that was held in New York City.¹⁸⁵ The tribunal put the United States government on trial for its crimes against Black people and found the government guilty. ANRO was organized to educate Blacks throughout the country about the tribunal and to gather additional evidence to support the tribunal's findings.¹⁸⁶ Both the Black Reparations Commission and ANRO are currently inactive but are supportive of N'COBRA's work.

The idea to establish N'COBRA came from Dorothy Lewis of the Black Reparations Commission.¹⁸⁷ (N'COBRA later gave Lewis the honorary title of Queen Mother for her many years of work and leadership in the reparations movement. "Queen Mother" is now the honorific by which she is commonly known.) Lewis successfully urged the late Imari Obadele, a highly regarded Black nationalist leader and President of the Provisional Government of the Republic of New Afrika (RNA), to reach out to organizations and individuals to build a mass movement in support of reparations.

was founded in the early 1990's to be supportive of the demand for reparations for Black people. See CURE Reparations Education & Advocacy, History, <http://www.reparationsthecure.org/AboutUs/History> (last visited Mar. 18, 2010).

¹⁸⁰ Members of the Choctaw Tribe attended the October 1992 National Conference of Black Lawyers conference in Jackson, MS, supporting NCBL's agenda, which included reparations. Japanese Americans active in the Japanese-American redress movement attended some of the first meetings and conferences organized by N'COBRA in 1989 and the early 1990s.

¹⁸¹ Worrill, *supra* note 89, at 203–04; Interview with Leonard Dunston, former President of NABSW (Dec. 1, 2009).

¹⁸² BERRY, *supra* note 4, at 4; Biondi, *supra* note 4, at 257; Deadria Farmer-Paellman, *Black Exodus: The Ex-Slave Pension Movement Reader, in SHOULD AMERICA PAY?: SLAVERY AND THE RAGING DEBATE ON REPARATIONS*, *supra* note 3, at 22, 27; Roberts, *supra* note 89; Worrill, *supra* note 89, at 203; *Formulating Reparations*, *supra* note 3, at 462–63.

¹⁸³ HENRY, *supra* note 92, at 107; Telephone Interview with Dorothy Benton Lewis, N'COBRA Litigation Comm. Member (Jan. 5, 2010).

¹⁸⁴ HENRY *supra* note 92, at 107; Telephone Interview with Dorothy Benton Lewis, *supra* note 183.

¹⁸⁵ Telephone Interview with Dorothy Benton Lewis, *supra* note 183.

¹⁸⁶ *Id.*; Telephone Interview with Ajamu Sankofa, N'COBRA Litigation Comm. Member (Nov. 29, 2009).

¹⁸⁷ Aiyetoro, *supra* note 178, at 211.

N'COBRA thus follows in the tradition of organizations devoted solely to reparations activism as well as those with a broader racial justice agenda. Like these organizations, N'COBRA sprang from a Black nationalist base.¹⁸⁸ Many of its founding members and leadership embraced what Section II characterizes as a strong-form Black nationalism, calling for a separate Black nation-state within the borders of the United States. For instance, Imari Obadele, one of the leaders of the Republic of New Afrika, issued the call for the creation of N'COBRA.

A. *The Founding of N'COBRA*

1. Organizing Meetings

N'COBRA was initially organized out of this Black nationalist focus on reparations represented by the organizations described in the introduction. However, N'COBRA had a broader purpose—to make the call for reparations a truly mainstream movement and expand its reach beyond the Black nationalist community.¹⁸⁹

The organizing of N'COBRA was directly linked to the Black progressive legal community. In September 1987, during the bicentennial of the U.S. Constitution, the National Conference of Black Lawyers (NCBL), a group of progressive Black attorneys, held a conference on what the U.S. Constitution would look like if it had been drafted with the human and civil rights and material needs of enslaved Africans and their descendants in mind.¹⁹⁰ A panel on reparations was organized by the Essay co-author, Adjoa A. Aiyetoro. The panel included Richard America, a noted economist; Nkechi Taifa, a member of NCBL and past Minister of Justice of the RNA; Imari Obadele, President of the RNA; and, Chokwe Lumumba, a member of NCBL and Chairman of the New Afrikan Peoples Organization.¹⁹¹ After receiving the invitation to participate on the panel and at the urging of Queen Mother Lewis, Obadele issued an organizing letter inviting the NCBL and more than twenty-five other organizations as well as a number of individuals to meet to discuss the development of a definitive campaign for reparations. Most of the organizations that attended were associated with Black nationalist or pan-Africanist organizations with virtually no representatives from mainstream racial organizations.¹⁹² September 1987 was also an auspicious month to re-energize the movement for reparations because on September 17, 1987, the House of Representatives passed the bill authorizing reparations to Japanese Americans forced into internment camps during World War II.¹⁹³

¹⁸⁸ *Id.* at 211–12.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 211–13.

¹⁹¹ *Id.* at 211. The New Afrikan Peoples Organization was formed by former members of the Republic of New Afrika, also seeking a separate Black homeland within the United States.

¹⁹² *Id.* at 211. The purpose of the meeting as described in the letter of invitation was to discuss the building of support for the armed struggle in Southern Africa. *Id.* However, the group assembled at this first meeting in September 1987, and decided that the organization should only focus on reparations. *Id.*

¹⁹³ This bill was passed after Japanese Americans, with the support of organizations such as the American Civil Liberties Union, successfully lobbied Congress for a number of years. Yamamoto et al., *supra* note 154, at 1293. Their work, including litigation efforts, helped re-energize an interest in organizing a mass movement to obtain reparations for Black people. *See, e.g.*, Eric K. Yamamoto, *Racial Reparations: Japanese American Redress and African American Claims*, 40 B.C. L. REV. 477 (1998); *see also* Leslie T. Hatamiya, *Institutions and Interest Groups: Understanding the Passage of the Japanese American Redress Bill*, in *SORRY*, *supra* note 4, at 190.

The class consciousness of most of the organizations forming N'COBRA¹⁹⁴ (although not necessarily the class of all individual members) was working class and poor.¹⁹⁵ Many of the founding organizations and individuals engaged in grassroots activism, *i.e.*, focusing their efforts on educating, mobilizing, and organizing people in the Black community.¹⁹⁶ In focusing on the grassroots, N'COBRA followed organizations that had focused primarily on reparations.¹⁹⁷ Those in leadership positions included people who by profession and income were members of the Black working class and middle class. The majority of the leadership, however, was of the middle class (although most from working-class families). All of the leadership had a profound and sincere concern for working-class and poor Blacks.¹⁹⁸ The goal of N'COBRA was to build a mass movement and, therefore, to cross class lines.¹⁹⁹

2. Initial Work

N'COBRA worked hard to fulfill this pledge to cross class lines. This was apparent in its organizing and mobilizing efforts to get resolutions introduced and passed in local and state legislative bodies in support of reparations. For instance, one of N'COBRA's leading members, the late Ray Jenkins ("Reparations Ray") was a real estate agent who embraced a non-elite, oppositional political consciousness. Jenkins had actively supported the political campaign of Congressman John Conyers (D. MI), a member of the Black political elite. Jenkins successfully lobbied Rep. Conyers to draft the now-famous Reparations Study Bill, H.R. 40, which Conyers introduced in 1989 and in each new Congressional session since then.²⁰⁰ In its lobbying and other activism,

¹⁹⁴ The NCBL, *e.g.*, is a membership organization of lawyers, law students and those interested in the workings of the law. Although its membership may be classified as middle class, based on income or professional identification, the NCBL describes itself as the legal arm of the Black Liberation struggle. Its work crosses classes since it not only focuses on the poor and working class, it focuses on the rights of the legal advocates who represent the interests in liberation of all Black people in the domestic and international arena. *See generally* National Conference of Black Lawyers, <http://www.ncbl.org/> (last visited May 21, 2010).

¹⁹⁵ The Authors define "working class" as persons who generally work for an entity that pays them for all aspects of their labor. The term middle class is used to describe persons who may work for a salary or are paid based on services rendered and enjoy a relative autonomy in delivery of their work product.

¹⁹⁶ Sonny Carson, *e.g.*, led a local group in Bronx, New York that focused on reparations education in the Bronx. *See The Education of Sonny Carson*, EBONY, Aug. 1974, at 157-59.

¹⁹⁷ *See supra* Part I.B.

¹⁹⁸ *E.g.*, Chokwe Lumumba, Chairperson of the New Afrikan Peoples Organization, was from a working class family in Detroit. He is a practicing attorney and councilman in Jackson, MS and was a practicing attorney in Detroit, MI at the founding of N'COBRA. Likewise, Imari Obadele, founding President of the Republic of New Afrika, was from a working class family, obtained a Ph.D. and at the time of the founding of N'COBRA was a professor at Prairie View College in Texas.

¹⁹⁹ N'COBRA had the support of working-class and poor Black people and included in its outreach some labor organizations such as the Black Workers for Justice, Black farmers' associations, Coalition of Black Trade Unions and the Million Worker Movement. *See generally* National Conference of Black Lawyers, *supra* note 194. Much of its mass work, however, was outside of organized labor. *Id.*

²⁰⁰ Commission to Study Reparations Proposals for African Americans Act, H.R. 3745, 101st Cong. (1989). The bill number changed to H.R. 40 in subsequent sessions of Congress. *See* Commission To Study Reparations Proposals for African-Americans Act, H.R. 40, 111th Cong. (2009). *See, e.g.*, Aiyetoro, *supra* note 178, at 217; John Conyers, Jr. & Jo Ann Nichols Watson, *Reparations: An Idea Whose Time Has Come*, in SHOULD AMERICA PAY?: SLAVERY AND THE RAGING DEBATE ON REPARATIONS, *supra* note 3, at 14, 17, for discussion of the development of H.R. 40.

N'COBRA worked through its chapters and leaders to educate and build bridges to mainstream Black organizations, including churches and sororities and fraternities. N'COBRA successfully encouraged many of these organizations to make reparations an active topic within their respective organizations.²⁰¹ It also built coalitions with the National Bar Association and the National Association for the Advancement of Colored People (NAACP).²⁰² In response to N'COBRA's outreach, both organizations made reparations part of their agenda.²⁰³ N'COBRA thus served as a catalyst to prompt mainstream organizations to join the reparations movement. However, none chose to become organizational affiliates of N'COBRA and few members of these organizations were identifiable as N'COBRA members.²⁰⁴ Their hesitancy may have stemmed from their desire to maintain an appearance of organizational autonomy. However, it may also have stemmed from their identification of N'COBRA as a Black nationalist or pan-Africanist organization.²⁰⁵ Mainstream Blacks and their institutions often view Black nationalists as radical and on the fringe of U.S. politics. N'COBRA's leadership, name, and logo are a case in point.

3. Effects of Black Nationalist Identification

Like the Ex-Slave Pension Association, N'COBRA envisioned reparations as a mass movement that would be racially inclusive, but conducted under Black leadership. N'COBRA did not actively encourage non-Blacks to join, although it did accept non-Blacks as members. Its membership rolls reflect at least four white members, all women, three of whom were already involved with reparations activism.²⁰⁶ One of the three, Ida Hakim, was encouraged by N'COBRA to found Caucasians United for Reparations and Equality (CURE). Despite its vision of reparations as a racially inclusive movement and its collaboration with CURE, the fact that many of N'COBRA's visible leadership were Black nationalists may have contributed to the identification of N'COBRA as a Black nationalist organization that would not welcome mainstream activist strategies.

N'COBRA's name and logo also emphasized its Black nationalist and pan-Africanist roots and may have contributed to the mainstream Black community not becoming an active force within N'COBRA.²⁰⁷ The acronym "COBRA" with the N (National) separated from it by an apostrophe meant different things to the N'COBRA's founders than it did to the mainstream. In Egypt, the cobra snake was known as Uraeus and served as the protector of the society. It also distinguished "COBRA" because the founders believed it symbolized the maturity of moving from mental slavery to mastership. The logo also included a snake climbing a palm tree.²⁰⁸ The founders did not consider the negative impact the logo and acronym might have on significant

²⁰¹ Aiyetoro, *supra* note 178, at 213.

²⁰² *Id.* at 222; *Formulating Reparations*, *supra* note 3, at 464 n.40.

²⁰³ Aiyetoro, *supra* note 178, at 222.

²⁰⁴ Interview with Kupenda Olusegun, former Membership Co-Chair and Co-Manager, N'COBRA Nat'l Office, in D.C. (Mar. 8, 2010).

²⁰⁵ Aiyetoro, *supra* note 178, at 220; HENRY, *supra* note 92, at 107.

²⁰⁶ These three came from Silas Muhammad's Lost Found Nation of Islam Reparations Project, one of the first organizations to focus on making a claim for reparations before the United Nations.

²⁰⁷ See *supra* notes 130–31 and accompanying discussion.

²⁰⁸ Aiyetoro, *supra* note 178, at 214–15.

numbers of mainstream Black people, possibly preventing them from joining the movement and also alienating sympathetic whites who might embrace the effort. Perhaps if there had been a larger representation of non-nationalist organizations at N'COBRA's founding, this discussion would have been put on the table and other logos and names considered that would not alienate the mainstream. Rather than encouraging active participation in N'COBRA, the acronym and the logo may have fed into the stereotype of Blacks as dangerous and aggressive and Black nationalists and pan-Africanists as the radical fringe, perhaps making the elite organizations wary of identifying with it.

Despite its inability to build strong mainstream membership within the organization, N'COBRA has been a leading voice in the reparations movement.²⁰⁹ As it became recognized for its advocacy of reparations, N'COBRA deliberated about ways to make the organization more effective. This effort extended the discourse on reparations in courtrooms and boardrooms throughout the United States.

4. Structural Changes and Legal Strategies

In 1993, N'COBRA decided to change its national organizational structure. Rather than relying solely on the chapters and leaders to do the organizing work, N'COBRA developed national commissions to develop and implement its programmatic work. These commissions worked in cooperation with the local chapters and the national board of directors. The commissions included Internationalization, Human Resources, Information and Education, Economic Development, Membership and Organization, and Legal Strategies.²¹⁰ The Legal Strategies Commission initially focused on legislative efforts, particularly to obtain support for H.R. 40, which Rep. Conyers continued to introduce into each session of Congress.²¹¹ Members of N'COBRA's Legal Strategies Commission became aware of individual lawsuits being filed seeking reparations for slavery. Most of these filings were unreported and had been dismissed without comment. However, in 1995 the Ninth Circuit Court of Appeals in California published its ruling in *Cato v. United States*.²¹² The Court concurred with the lower court in the dismissal of two consolidated reparations cases.²¹³ The Ninth Circuit went to some lengths to articulate the procedural standards that reparations plaintiffs must meet.²¹⁴ In the final analysis, the court held that the claim for reparations was a political and not a legal claim.²¹⁵ After this decision, some members of NCBL and N'COBRA, including members of the Legal Strategies Commission, began to discuss expanding the Legal Strategies Commission's focus to include developing a litigation strategy. These members were challenged by this ruling and believed that in addition to continuing its legislative work, it was important to attempt to develop litigation to demonstrate that reparations was required by the law.²¹⁶ The groups were in large part influenced by a

²⁰⁹ *Id.* at 221; Conyers & Nichols Watson, *supra* note 200, at 18–19.

²¹⁰ *Id.* at 223.

²¹¹ *Id.*; *Formulating Reparations*, *supra* note 3, at 463.

²¹² *Cato v. United States*, 70 F.3d 1103 (9th Cir. 1995).

²¹³ *Id.* at 1105–06.

²¹⁴ *See id.* at 1106, 1109–10.

²¹⁵ *See id.* at 1109.

²¹⁶ N'COBRA National Board, *National Five Year Strategic Plan*, ENCOBRA, Summer 2003, at 7 [hereinafter *Five Year Plan*] (on file with authors).

paper by Lord Anthony Gifford, an English barrister, outlining the progressive legal argument for reparations.²¹⁷

N'COBRA, growing out of the Black nationalist and pan-Africanist movements for reparations, has sought, some would say unsuccessfully, to count among its active membership a significant number of mainstream Blacks.²¹⁸ While it may not have added very many mainstream members to its membership rolls, N'COBRA's embrace of commissions as its primary programmatic arms led to the creation of the Legal Strategies Commission. That Commission, in turn, was a catalyst for a national dialogue on litigation strategy, which included mainstream activists and some who later filed reparations litigation themselves.²¹⁹

B. The Legal Strategies Commission and Reparations Litigation

1. The Decision to Develop Litigation

The discussion of expanding the Legal Strategies Commission's work to include the development of litigation strategies formally began as a postlude to a National Conference of Black Lawyers retreat in Georgia in 1995.²²⁰ A small group, including Imhotep Al-kebulan, Obadele, Akilah Ali, Chokwe Lumumba, and Aiyetoro, discussed the parameters of the work and how to proceed. They concluded the Commission should create a subcommittee to work on litigation. Lumumba and Ali agreed to serve as co-chairs of the new Reparations Litigation Committee.²²¹ Although the work seemed daunting, particularly given the Ninth Circuit's decision in *Cato v. United States*, there was enthusiastic agreement to move forward and craft a reparations cause of action.²²² However, due to their schedules, the co-chairs could not activate the Reparations Litigation Committee, and it remained dormant until activated in 1997 by Adjoa Aiyetoro who became chair.²²³

The active members of the Legal Strategies Commission, including Ajamu Sankofa, Gilda Sherrod-Ali, Taifa, and Aiyetoro, developed an invitation list for the first meeting of the Reparations Litigation Committee. The list included lawyers, activists, political scientists, and social scientists.²²⁴ The Commission members recognized that in order to conceive reparations as a viable cause of action, the Reparations Litigation Committee had to have representatives from many sectors of the Black community.²²⁵

²¹⁷ See Lord Anthony Gifford, British Queens Counsel, Paper Presented to the First Pan-African Congress on Reparations: The Legal Basis of the Claim for Reparations, (Apr. 27–29, 1993), <http://www.arm.arc.co.uk/legalBasis.html>.

²¹⁸ See discussion *supra* pp. 20–21 and accompanying notes.

²¹⁹ The outreach to the N'COBRA Legal Strategies Commission leadership to become a part of other litigation efforts is an example of N'COBRA's leadership in this area of reparations work.

²²⁰ N'COBRA REPARATIONS LITIGATION COMM., N'COBRA, TALKING POINTS: OUTREACH TO LEGAL ORGANIZATIONS 2 (Oct. 2001) (on file with authors).

²²¹ *Five Year Plan*, *supra* note 216.

²²² *Cato v. United States*, 70 F.3d 1103 (9th Cir. 1995).

²²³ *Five Year Plan*, *supra* note 216, at 1.

²²⁴ N'COBRA Reparations Litigation Committee, Attendees (Oct. 26, 1997) (list of attendees included lawyers, non-lawyers, activities, and educators) (on file with authors).

²²⁵ Those in attendance included Ron Walters, Ph.D., C.J. Munford, Ph.D., Macke McLeod, Leonard Muhammad, Richard America, Ph.D., Ajamu Sankofa, Adrienne Davis, Ben Swinson, Ph.D., Chokwe

Others invited to join the Committee were a mixture of people, all Black, who identified with the progressive movement for racial justice (*e.g.*, Walters, Sankofa, McLeod, Montiero, and Aiyetoro), those in the mainstream with a personal and professional focus on the rights and conditions of Africans and African descendants (*e.g.*, Davis, Page, and America) and those identified as Black nationalist or pan-Africanist with a history of membership in organizations supporting reparations (*e.g.*, Taifa, Munford, Muhammad, Swinson, Preudhomme, Dunston, Muid, Jeffries, Ali, and Olusegun). The discussion at the Reparations Litigation Committee's first meeting, September 12, 1997, included the legal parameters of a lawsuit, particularly the procedural hurdles and the subject matter of the lawsuit.²²⁶ Those present agreed that the procedural issues should take a backseat to the discussion of the substantive claims for litigation.²²⁷

2. The Work of the Reparations Litigation Committee

The Committee's vision was aspirational and expansive: to develop a lawsuit that would remedy the vestiges of slavery and Jim Crow still being experienced by present day Black people.²²⁸ In light of *Cato*, the Committee understood that any subsequent litigation would need to overcome substantive and procedural hurdles.²²⁹ However, the magnitude of the work required and the difficulty of the task revealed itself as the Committee, with a core membership and new members coming and going, wrestled with the substantive claims from 1997 to 1999 before attempting to draft a complaint.²³⁰ Much like the plaintiffs in *Cato*, the Committee sought to develop a single lawsuit that encapsulated all legal claims of harms to Blacks stemming from slavery and Jim Crow for which the United States government was responsible.²³¹ In late 1997 and early 1998, the Committee determined that the subject matter of the lawsuit would be four areas of on-going injury, including Peoplehood (the disconnection from Africa), Criminal Punishment, Education, and Wealth/Poverty.²³² In early 1999, the Committee added Health as another injury area and as a fifth claim.²³³ In contrast to Callie House, the Committee sought a remedy for the numerous legacies of slavery as well as Jim Crow. Contrary to Queen Mother Moore and James Forman, it sought to name and support these injuries with particularity.

The Litigation Committee established subcommittees, each consisting of at least one lawyer, to focus on a specific injury area, research and describe the original and

Lumumba, Leonard Dunston, Onaje Muid, Nkechi Taifa, Tony Montiero, Mark Thompson, Leonard Jeffries, Ph.D., Kenny Page, Kalonji Olusegun, Akili and Adjoa A. Aiyetoro. *Id.*

²²⁶ Reparations Litigation Committee meetings announcement (Oct. 8, 1997) (including a summary of the Sept. 13, 1997 meeting).

²²⁷ See Reparations Litigation Comm., N'COBRA, Oct. 8, 1997 Meeting (setting agenda for Oct. 26, 1997 meeting and describing discussion at Sept. 12, 1997 meeting).

²²⁸ See Class Action Complaint (redraft of Spring 1999 Complaint) (on file with authors).

²²⁹ All members of the Committee were volunteers. The Committee gave travel subsidies to Committee members who needed it, and also provided breakfast, lunch, and dinner on the meeting day.

²³⁰ The first complaint draft was not developed until 1999. See note 196.

²³¹ See Class Action Complaint, *supra* note 228.

²³² Reparations Litigation Comm., N'COBRA, Meeting Minutes 2 (1998) (on file with authors) [hereinafter 1998 Meeting Minutes].

²³³ See Reparations Litigation Comm. Action Points, N'COBRA, Aug. 28–29 Meeting (1999) (on file with authors).

ongoing injury, and identify plaintiffs and defendants.²³⁴ As the work developed it was necessary for some lawyers to work with two subcommittees, *e.g.*, Sankofa worked with both Criminal Punishment and Health, providing significant leadership on both.²³⁵ The first task of the subcommittees was to develop memoranda on the harms of slavery, including bibliographies of sources that would assist in developing the substantive legal claims of remediable injury.²³⁶ Although more challenging than the Committee had initially anticipated, over a period of months all subcommittees submitted a bibliography and most submitted some narrative of their work.²³⁷ Over the course of seven years the Committee met approximately every three months, deliberated on any proposals for content made by the subcommittees, and debated differences in views on substantive questions, logistics, and how to proceed.²³⁸

(a) Drafting the Complaints

The Committee's deliberations on proposals submitted by the subcommittees or individual members guided the subcommittee work. The result was the rough draft of a Preliminary Statement for a complaint that would consider all of the injury areas.²³⁹ This rough draft was created in early 1999 and went through a number of edits in 1999 and 2000.²⁴⁰ Much debated was litigation strategy.²⁴¹ Some Committee members wanted to move forward on a single, inclusive, and unified complaint while others wanted to take a more conservative approach. Fancher, for example, suggested that the Committee follow the education desegregation strategy of Thurgood Marshall and initially file smaller actions to test the legal waters.²⁴² He also expressed concern that it would be hard to meet the class action requirements, for example, of commonality, with a single large lawsuit.²⁴³ To help decide how to proceed, the Committee held a consultation meeting on October 28, 2000, with lawyers who had specific expertise in case development and litigation and noted leaders in the Black community attending.²⁴⁴ Some of the consulting attorneys suggested focusing on narrower issues, *e.g.*, discrimination against teachers. This discussion led to a Committee decision to maintain focus on the injury areas yet to file separate complaints for each.

²³⁴ 1998 Meeting Minutes, *supra* note 232, at 1–2, 5.

²³⁵ See Letter to Barbara Shansky CCing Ajamu Sankofa as co-chair of the Criminal Punishment Subcommittee and March 2, 2002 draft of Health Care Complaint (indicating Ajamu Sankofa helping in drafting complaint).

²³⁶ 1998 Meeting Minutes, *supra* note 232, at 1–2, 5.

²³⁷ Bibliographies and Memoranda from the Wealth and Poverty, Education, Criminal Punishment, and Peoplehood Subcommittees to the N'COBRA Litigation Committee (Jan.–Feb. 1999) (on file with authors).

²³⁸ See, *e.g.*, Reparations Litigation Comm. Meeting Announcement (Oct. 8, 1997) (on file with authors); Minutes of May 16, 1998 Meeting (on file with authors).

²³⁹ See Class Action Complaint, *supra* note 228.

²⁴⁰ Letter from Mark P. Fancher, Comm. Member, NCBL, to Adjoa Aiyetoro, Committee Chair, NCBL (Mar. 28, 1999) (on file with authors); Complaint of Reparations Litigation Committee (Apr. 22, 1999 and Dec., 1999) (on file with authors).

²⁴¹ See, *e.g.*, Letter from Mark P. Fancher to Adjoa Aiyetoro, *supra* note 240.

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ See Sign-In Sheet, N'COBRA's Litig. Consultation Meeting (Oct. 28, 2000) (on file with authors).

Between late 2000 and early 2004, each subcommittee drafted and redrafted complaints focused on its injury area.²⁴⁵ The first complaint drafted and the most complete complaint was from the Criminal Punishment Subcommittee. The Committee decided to vet that complaint with some attorneys with expertise in civil rights litigation particularly in criminal law.²⁴⁶ This meeting was held on June 7, 2002, and included Chokwe Lumumba, private practitioner; Judith A.M. Scully, law school professor; Doris Green, private practitioner; Reginald Shuford, ACLU attorney; and Barbara Shansky, associate director, Center for Constitutional Rights.²⁴⁷ The Lawyers' Subcommittee of the Reparations Litigation Committee²⁴⁸ was invited to attend this consultation along with a member from each of the other subcommittees.²⁴⁹ The consultants made suggestions for revising the complaint to strengthen it and increase the possibility that it would not succumb to a motion to dismiss.²⁵⁰ A major concern discussed at the meeting was that procedural hurdles even in the narrower, more focused complaint continued to loom large and protect the United States from accountability. Although revisions continued until June 2004, the Committee did not complete and file the Criminal Punishment complaint.²⁵¹

(b) Impediments to Filing a Complaint

Several problems arose that delayed the filing of the complaint.²⁵² First, delays immediately surfaced as subcommittees often did not meet between meetings or the attorney assigned to the subcommittee was unable to be a part of the meeting. Another big issue was language. The language of the non-lawyers was different than the language of lawyers. Most of the lawyers spoke from their craft, articulating their concerns as causes of action and violations of specific laws. The non-lawyers spoke from their bases of racial justice advocacy, often resisting the reality that there were racial injuries that did not fit into the causes of action as crafted. The language and conceptualization of issues also differed between Black nationalist/pan-Africanists and the other participants. The nationalists and pan-Africanists spoke of Black self-determination and sovereignty. Members on the left wanted to use the litigation to reveal the impossibility of the capitalist United States being willing to fully confront and remedy racial and economic injustices. Others spoke of becoming equal citizens of the United States. Despite these differences, and maybe because of these differences, the discussion on substance was often exhilarating, complex, and thought-provoking; yet, the differences made decision-making time consuming and often tedious.

²⁴⁵ Complaints were prepared by the Criminal Punishment Subcommittee, Wealth and Poverty Subcommittee, Education Subcommittee and Health Subcommittee.

²⁴⁶ LEGAL STRATEGIES COMM'N, N'COBRA, LEGAL STRATEGIES COMMISSION REPORT 1 — June 20, 2002, at 1 (2002) (on file with authors).

²⁴⁷ LEGAL STRATEGIES COMM'N, *supra* note 246, at 1.

²⁴⁸ A Lawyers' Subcommittee was developed after the 2000 consultation to address the legal questions associated with preparing a complaint.

²⁴⁹ Memorandum from Adjoa A. Aiyetoro on the Schedule for Legal Expert Review to the Reparations Litigation Comm. (May 18, 2002) (on file with authors).

²⁵⁰ Summary, Revisions to Complaint Based on June 7, 2002 Panel of Legal Experts Meeting (on file with authors).

²⁵¹ *See generally* LEGAL STRATEGIES COMM'N, N'COBRA, LEGAL STRATEGIES COMMISSION REPORT — APRIL 6, 2002, at 1 (2002) (on file with authors).

²⁵² *See* discussion *infra* Part IV.

An additional dynamic creating delay was that, due to its preeminence in the reparations movement and noted work in developing litigation, N'COBRA was asked to support reparations litigation by people with close relationships with the Reparations Litigation Committee whose requests needed to be given serious consideration. There were three such requests. First, a former intern, Deadria Farmer-Paellman, asked N'COBRA's Reparations Litigation Committee to associate with the lawsuit against corporations she had developed and asked the chair, Adjoa Aiyetoro, to serve as co-lead counsel.²⁵³ The Committee made a unanimous decision not to associate with this litigation for several reasons.²⁵⁴ First, the organization was asked on the eve of filing the complaint in which they had no involvement. Second, some of the political strategies around the suit had already been decided and were in the process of being implemented. Third, the focus was on corporations and would take the Committee's leadership away from the work of developing a litigation strategy to hold the government accountable for reparations.

Also, Imari Obadele, Kalonji Olusegun, and Rashid Kuratibsha X, with the Republic of New Afrika, asked N'COBRA to join a lawsuit they had filed demanding a portion of the reparations distributed through the Japanese-American Redress Act.²⁵⁵ An overwhelming majority of the Committee decided not to support this request because it believed that if such a lawsuit was won it would mean that any reparations for African descendants would also be vulnerable to diminution by other groups of color that could claim similar injury.²⁵⁶ The Committee also believed that supporting such a lawsuit would be politically divisive since Japanese Americans were supportive of N'COBRA's work.²⁵⁷

In the third request, Charles Ogletree and Randall Robinson invited Aiyetoro to join a committee they were organizing outside of N'COBRA to consider reparations litigation.²⁵⁸ An overwhelming majority of the Reparations Litigation Committee wanted to associate with Ogletree and Robinson's effort to create a similar committee with high profile lawyers. They had not decided a particular approach to litigation, and the Committee believed that its participation would assist in formulating litigation against the government and would enhance its own work. Indeed, a working relationship between the Committee and this group was envisioned. Aiyetoro and Dorothy Lewis began working with Ogletree and Robinson's group, which became known as the Reparations Coordinating Committee (RCC).²⁵⁹ The RCC decided in 2001 to file a case to obtain reparations for the survivors and descendants of the 1921 Tulsa Race Riot. The

²⁵³ See LEGAL STRATEGIES COMM'N, *supra* note 251, at 2.

²⁵⁴ Reparations Litigation Comm., N'COBRA, Action Items: Reparations Litigation Committee Meeting 2 (June 8–9, 2002) (on file with authors).

²⁵⁵ See *Obadele v. United States*, 52 Fed. Cl. 432 (2002).

²⁵⁶ See, e.g., E-mail from Adjoa A. Aiyetoro, Comm. Chair, NCBL, to Imari Obadele, founding President of the Republic of New Afrika, and Kupenda Olusegun, former Membership Co-Chair and Co-Manager, N'COBRA (Sept. 29, 2003) (on file with authors); E-mail from Adjoa A. Aiyetoro, Comm. Chair, NCBL, to Imari Obadele, founding President of the Republic of New Afrika, and Kupenda Olusegun, former Membership Co-Chair and Co-Manager, N'COBRA (Oct. 3, 2003) (on file with authors).

²⁵⁷ See LEGAL STRATEGIES COMM'N, *supra* note 246, at 1.

²⁵⁸ See LEGAL STRATEGIES COMM'N, *supra* note 251, at 1–2.

²⁵⁹ Deadria Farmer-Paellman was also invited to become a part of the RCC and participated until some committee members raised objections regarding the timing and substance of her corporate litigation.

Committee felt this could be considered N'COBRA's first case and that lessons learned could inform the further development of litigation.

A final obstacle to filing a complaint was that N'COBRA could not raise sufficient funds to hire full-time staff to finalize the complaint and actually implement the litigation. This may have stemmed from several sources, both political and substantive. For instance, N'COBRA's image as a radical organization may have prevented more mainstream civil rights organizations from supporting the litigation. Ironically, although N'COBRA made a commitment in its founding meetings to make reparations a mainstream political issue and to include mainstream Blacks in its membership, it consistently projected an image that did not connect with mainstream activists and did not encourage their full participation. On the other hand, its framing of the causes of actions may also have created substantive differences. Its approach, to sue for reparations for injury areas, was contrary to the litigation model most of the mainstream attorneys and organizations had embraced. These attorneys and organizations focused on narrower claims and plaintiffs. For whatever reasons, N'COBRA did not obtain the commitment of a law firm with staff and financial resources to prosecute its suit.²⁶⁰

3. The Legal Strategies Commission's Influence on Current Reparations Litigation

N'COBRA publicized its goal of finding a way to litigate for reparations through the mainstream media, including mainstream organizations as consultants, and by organizing mainstream forums on reparations. Much of this exposure was a pre-cursor to the lawsuits led by Farmer-Paellman and Ogletree. Farmer-Paellman, the founder of the Corporate Restitution Committee and lead plaintiff in *In re African-Am. Slave Descendants Litig.*,²⁶¹ was a summer intern with N'COBRA's Reparations Litigation Committee in 1997. She was clear during her internship that her interest was in obtaining reparations from the private, corporate sector rather than the government.

Harvard law school professor and civil rights lawyer Ogletree met with Aiyetoro in early 1999 and indicated an interest in supporting reparations litigation. He was a signatory on a fund-raising letter for N'COBRA's litigation work.²⁶² As discussed above, he and Robinson, then Executive Director of TransAfrica Forum, called a meeting of high profile attorneys and some non-attorneys to develop litigation strategies for reparations in 2000.²⁶³ A number of the attorneys in this group immediately received

²⁶⁰ One of the law firms that represented Jewish victims of the Holocaust in reclaiming assets in Switzerland volunteered to provide human and financial resources to prosecute the case against corporations. Ogletree was able to organize multi-layers of support from law firms and the legal clinic at the University of Tulsa School of Law.

²⁶¹ *In re African-American Slave Descendants Litigation*, 471 F.3d 754 (7th Cir. 2006) (multidistrict litigation brought by African descendants seeking reparations from eighteen corporations).

²⁶² Letter from Adjoa Aiyetoro, Legal Counsel, N'COBRA, and Charles Ogletree, Legal Advisor, N'COBRA (July 26, 2000) (on file with authors).

²⁶³ "TransAfrica Forum is the oldest and largest African American human rights and social justice advocacy organization promoting diversity and equity in the foreign policy arena and justice for the African World." TransAfrica Forum, <http://www.transafricaforum.org/about-us> (last visited Mar. 1, 2010).

press coverage on their involvement in seeking reparations for Black people.²⁶⁴ Efforts to obtain reparations through litigation had finally become part of the work of the mainstream,²⁶⁵ yet in the process lost the visibility and efforts of the grassroots community in formulating the claims.²⁶⁶ The ideological differences among the participants in the RCC were not as great as the differences among members of the Reparations Litigation Committee. Only two RCC participants actively worked with the grassroots and Black nationalist movement for reparations: Fayé Rose Sanders and Aiyetoro. Indeed, the decision to take the case of the 1921 Tulsa Race Riot survivors and descendants was made by the lawyers and it was the lawyer group that developed the case with the assistance of legal historian Alfred Brophy.²⁶⁷

C. Summary

Although litigation in the courts initially was a small part of N'COBRA's reparations activism, it is arguably what introduced the organization to the legal mainstream. In fact, after 2000, the Reparations Litigation Committee's work became the sole focus of the Legal Strategies Commission.²⁶⁸

The work of N'COBRA re-ignited the movement for Black reparations beginning in the late 1980s. N'COBRA's commitment to taking the issue into the mainstream was realized, although the mainstream did not become associated directly with N'COBRA in any significant numbers. This distancing was due in part to N'COBRA's marginalization as a Black nationalist and pan-Africanist group and N'COBRA's inability to change that perception. In the end, neither Farmer-Paellman nor the RCC embraced N'COBRA's litigation strategy. Farmer-Paellman wanted to focus on corporations that had a connection to slavery. The RCC focused on specific incidents, such as the Tulsa massacre, where there were still living survivors. N'COBRA's strategy, however, was to focus on slavery and Jim Crow more broadly, to conceive defendants as governmental institutions, and to conceive plaintiffs as not only the immediate victims of slavery and Jim Crow but also their descendants.

²⁶⁴ See Willie E. Gary et al., *Making the Case for Racial Reparations: Does America Owe a Debt to the Descendants of Its Slaves?*, HARPER'S MAG., Nov. 2000, reprinted in SHOULD AMERICA PAY?: SLAVERY AND THE RAGING DEBATE ON REPARATIONS, *supra* note 3, at 79.

²⁶⁵ See JoAnn Watson, "Reparations" Ray Jenkins Joins the Ancestors, MICH. CITIZEN, Apr. 19, 2009 (Watson discusses how the legislative effort became a part of mainstream activity when N'COBRA obtained resolutions from the NAACP and other mainstream organizations to support H.R. 40. The NAACP's Legislative office made supporting H.R. 40 one of its priority issues in the early 1990s.).

²⁶⁶ See Gary et al., *supra* note 264; Justin Herdman, *Profs Join Slavery Reparation Effort*, HARV. L. REC., Mar. 10, 2000, at 1.

²⁶⁷ See *Alexander v. Okla.*, 382 F.3d 1206 (10th Cir. 2004). To the contrary, organizing support for *In re African-American Slave Descendants Litigation*, 471 F.3d 754 (7th Cir. 2006), focused on the grassroots. Conrad Worrill, president of the National Black United Front, was a primary organizer of support for that litigation.

²⁶⁸ In 2000, N'COBRA's board decided to disaggregate legislative work from the Legal Strategies Commission. N'COBRA formed a separate Legislative Commission to focus solely on lobbying and obtaining state, local, and organizational resolutions in support of H.R. 40.

IV. ORAL HISTORY SUMMARIES

These are not formal biographies, nor are they complete histories of these seven people. Rather, these are the accounts they told us of how they came to reparations and how it fits with their broader political vision of the world.

*Leonard Dunston*²⁶⁹

Leonard Dunston was born in 1940 and raised in rural North Carolina where segregation and racism were the norms. His father was a bricklayer and his mother a beautician. Dunston was the older of two boys. The college he attended, Livingstone College, an historically Black college in Salisbury, North Carolina, was fifteen miles from the home of the grand dragon of the KKK. He recalls that in his freshman and sophomore years the KKK came on the campus and burned crosses. Immersed in the racism of the rural South, it was not until his later college years that Dunston remembers taking part in some action to end racial inequities. In 1961, he joined a demonstration organized by the Congress for Racial Equality (CORE) in demonstrating against the segregated local theater where Blacks had to sit upstairs.

After a two year stint in the U.S. Army, Dunston joined his wife, Gladys, in New York City where she introduced him to the Black Arts Movement. The Dunstons also went to many rallies and demonstrations for racial justice and often heard Malcolm X speak on 125th Street. Dunston met the late Cenie Williams, the president of the New York Chapter of National Association of Black Social Workers (NABSW) and later president of the national NABSW, when he was going to various meetings concerning racial justice. He immediately resonated with Williams, joined the local NABSW chapter, and with the encouragement of Williams and others obtained a degree in social work. (The NABSW is dedicated to enhancing the quality of life and empowering people of African ancestry through advocacy, human services delivery, and research, including supporting Black adoption agencies and Black families who want to adopt Black children.) Dunston's immersion in the work to end racial inequalities continued to deepen as he became active with the NABSW. Much of his racial justice work was done through the NABSW, which worked in collaboration with other organizations such as the Black Panther Party and Brooklyn CORE. He held many leadership positions in NABSW, serving as President from 1994-1998. After decreasing his involvement with NABSW in 2006, Dunston began working with The Institute of the Black World 21st Century. He convened the Black Family Summit with Minister Louis Farrakhan of the Nation of Islam and brought together 30 Black nationalist organizations within Farrakhan's Million More Movement to provide support to Black people displaced by Hurricane Katrina.

Dunston also had an upward trajectory in his career as a social worker. He began his career working as a street gang organizer in New York City and simultaneously became involved in union activities, serving as the President of Local 1509 and becoming a founding member of the Coalition of Black Trade Unionists. His professional career led to a three-year-term as Program Planner of the State of North Carolina followed by

²⁶⁹ Telephone Interview with Leonard Dunston, N'COBRA Litigation Comm. Member (Dec. 1, 2009).

twelve years of service as the Commissioner of the New York State Office of Children and Families. He was the highest ranking Black official in the Cuomo administration.

In 1995, Dunston, as the President of NABSW, responded favorably to a request that NABSW be represented on N'COBRA's Reparations Litigation Committee. Long a supporter of reparations, attending rallies and conferences where reparations was an agenda item, Dunston committed NABSW to working to achieve reparations. He personally served on the Committee "from its inception to its hiatus" (1995-2004). He sees his major contribution as identifying resource people from various disciplines who could speak to the continuing harm of slavery and Jim Crow. He also used his social work training to "help depersonalize discussion and neutralize what may have been turf battles; thus, aiding the chair in focusing on the real issues."

These turf battles may have been a reflection of what Dunston saw as strong personal, ideological, and philosophical differences within the group. "These differences made logical consensus compromises difficult to achieve." Despite these significant differences, Dunston views the major success of the Committee as its crafting of a legal format and outline for a reparations lawsuit. His reflections on his moments of pride include his observation of "how skillfully the team leader was able to harness the collective thoughts and ideas and make them congruent." He also enjoyed the esprit de corps of the group and its camaraderie despite ideological differences.

Dunston sees the reparations movement as currently needing clarity and strategies for conveying the importance of reparations to and for African people, especially in light of the Obama presidency. He would support the reactivation of a Reparations Litigation Committee if it was under the leadership of the prior chair of the Committee.

Mark Fancher²⁷⁰

Born in 1956, Mark Fancher is the son of educators who met in his mother's hometown of Marion, Alabama. The history of the civil rights movement is entwined with Marion. It is the home of the late Coretta Scott King and the late Jean Young (the first wife of Andrew Young). Fancher's mother counted them among her friends. Fancher recently learned of another historical family highlight. While reading *Slavery by Another Name* by Douglas Blackmon, he learned Confederate troops used slave labor and that some of this labor was from the Fancher plantation. He strongly suspects that the Fancher plantation referenced was where his ancestors were enslaved.

Fancher's family sheltered him from white people. His family moved to Nashville when his parents got jobs at Tennessee State University in 1961, right after the heat of the sit-in movement in Nashville. He remembers seeing Martin Luther King, Jr., on television every night being arrested and wondered why his parents "hung out with this guy." Fancher had concluded incorrectly that his parents had a relationship with him because King was a daily topic of conversation. Fancher thought they needed to be with a better class of people. It was not until King's assassination that he developed an awareness of racial injustice. His mother was distraught and he did not understand why. She sat him down and explained the importance of King and the racial justice movement. Fancher then began to observe the various organizations for racial justice in Nashville. He saw members of the Nation of Islam selling papers and the Black Panthers were in the

²⁷⁰ Telephone Interview with Mark Fancher, N'COBRA Litigation Comm. Member (Nov. 25, 2009).

barber shop. He began reading a lot and was influenced by the Black Power groups. His parents shared the concern of other middle-class Black parents: where was this all going. There was fear in both the white and Black communities. Fancher's mother overheard a white store owner, who did not realize she was in the store, planning where he was going to store guns in case Black people from the neighboring community over the bridge attacked him.

Fancher was lulled into thinking racial problems no longer existed when he spent six years, 1970-1975, in a well-integrated laboratory school where most parents were progressive. He had a rude awakening when he enrolled in the University of Tennessee at Knoxville in 1975. There was a large population of rural white students "with backward views of race" and Black students from Memphis who remembered tanks rolling across streets in the aftermath of King's assassination. He was active with the Black student group, Afro-American Student Liberation Force, and participated in its many demonstrations and petition drives. The Afro-American Student Liberation Force led the anti-apartheid movement on the Knoxville Campus. No other campuses of the University of Tennessee had a Black-led anti-apartheid movement. There were confrontations with the University administration, one in which the students were physically accosted by campus police and some were arrested. The University started quietly to divest from South African investments; however, administrators questioned whether the Black students had been influenced by outsiders.

Fancher's racial activism led him to a number of organizations. Most notably he became a member of the National Conference of Black Lawyers (NCBL), a founding member of N'COBRA, and served in many capacities including co-chair of the organization for a number of years. It was through his affiliation with NCBL that he came to know the chair of the Reparations Litigation Committee. He was asked to join the Committee and served for approximately five years. Prior to his involvement with the Committee, he had provided moral support to the reparations movement. "The pursuit of reparations was happening in reverse order. Populations that had succeeded and had stabilized their political and economic base and had some leverage to compel oppressors to provide reparations" were receiving reparations. "African Americans were still very much destabilized and didn't have leverage to compel reparations."

Fancher contributed to the Committee's work as a participant in brain-storming sessions, providing legal research, coordinating discrete areas of inquiry, and drafting and editing a complaint. He identifies a number of challenges that faced the Committee including: the absence of legal and strategic precedent; some ignorance on the part of the client constituency of real challenges; some conflicting ideas and notions of what should be and could be achieved; some turf battles; and the fact that many on the Committee, including himself, felt that there could be one lawsuit to address the whole issue and, on hindsight, that was not feasible.

Despite these challenges Fancher views the Committee as succeeding in "fleshing out a lot of the legal theories that had just been bouncing around people's heads." This "fleshing out" laid "the foundation for actual pieces of litigation that were eventually filed." Through its relationship with the reparations movement, the Committee was able to provide "extremely critical information to the movement." Although Fancher expressed disappointment in "elements of frustration that led some to retreat or attack,"

he was always inspired by “seeing such a diverse group (profession and ideological persuasion) work together harmoniously toward a goal.”

To Fancher, the reparations movement has declined since the 1990s. It has lost most of the white support and some of the Black community—the current view being “to find another way to get where we are going if there is even a thought that there is somewhere to go.” Therefore, Fancher would “only support a reactivation of the Reparations Litigation Committee” if it developed a strategy to work on reparations “in a covert and protracted way such that you build the case for reparations and then box a court in to having no choice.”

*Queen Mother Dorothy Benton Lewis*²⁷¹

Born in 1944, Dorothy Benton Lewis was raised in Fairbanks, Alaska. Her family, who was in the building business, moved from Texas to Alaska before it became a state, and waves of relatives later joined them to work, first in the construction business, and later on the Alaska oil pipeline. Lewis, who as described earlier received the honorary title of “Queen Mother” from N’COBRA, recalls the early fifties in Alaska as a “frontier life” with many homesteaders. Lewis grew up with her parents and two brothers, one older and one younger, a maternal grandmother, and, after a divorce and her mother’s remarriage, her step-father. She also recalls “a lot of extended family,” including both maternal and paternal grandmothers whose recollections significantly influenced Lewis. A slave master named Tolbert had fathered her maternal grandmother’s mother and aunt. Her grandmother recalled that Tolbert’s family that he enslaved stayed in one section of the plantation, while he stayed with his white family in a different part, but with his white children, he “came out and visited them.” Queen Mother Lewis has fond recollections of annual family reunions in Texas and Louisiana at which her maternal grandmother and other relatives shared family stories, visited the Tolbert plantation, and the gravesite on the plantation where her great grandmother and great aunt remain buried. In Alaska, Lewis’ entire family was active in African-American lodges and fraternal organizations, religious institutions, and/or the NAACP. “Everybody belonged to the NAACP.” Lewis joined the NAACP, but not the Eastern Star, the sororal organization to which many of her female relatives belonged. At this point, Lewis reports she was a young wife and mother and not working.

She recalls first being introduced to reparations in the fourth grade when the teacher talked about the benefits of slavery to Africans. Lewis’ grandmother had told her about slavery’s injustice, and this had stayed with her, although “I did not have the word ‘reparations’ available to me in the fourth grade.” Later, when she was an active member of the NAACP, native Alaskans asked the organization to support their land claims, which the organization did. NAACP members, a racially diverse group, also perceived parallels between the Alaskan land claim and a labor claim for African Americans.

Queen Mother Lewis recounts that Black reparations, more specifically “restitution for involuntary servitude,” then became a main issue for her NAACP chapter. They tried to organize for reparations, contacting Dick Gregory and other Black leaders they believed would be supportive. Lewis says that the older people in the NAACP believed

²⁷¹ Telephone Interview with Dorothy Benton Lewis, N’COBRA Litigation Comm. Member (Dec. 11, 2009).

descendants of enslaved Africans would one day be paid reparations for slavery and Jim Crow. The local chapter asked the national NAACP to support its activism. They invited Roy Wilkins, then executive director of the national NAACP, to Alaska to talk about parallels between the native Alaskan land claims and Black claims for reparations. She recalls the national organization did support the native land claims but remained silent on the question of restitution for Black involuntary servitude. Interested NAACP members formed a subcommittee called “Restitution for Involuntary Servitude” and continued to seek support from other organizations. “National NAACP finally did come out in support of the call for Black reparations, as we later called it, but that was *many* years after that.”

Around 1973 Lewis had an opportunity to come to the mainland United States, which was attractive to her because “there were more Black people here.” Reparations had also become a primary focus for her, and “we had gotten all the support we could in Alaska.” Alaskans from different ethnicities, Chinese, Indian, and East Indians, “were all right with” reparations for Black Americans.

When Lewis moved to Washington, D.C., in the 1970s, she became even more active in the reparations movement. She recalls that at that time the *Bakke* case was “a big issue,” generating much discussion and debate. Lewis would ask, “Why are you talking about *Bakke* and a few slots in a medical school? With reparations we could own medical and law schools. The hell with *Bakke*.” At this point, Lewis was working in public health, but she recalls spending almost all of her free time organizing for reparations, learning of meetings and attending to connect with like minded people and to advocate for reparations. She recalls people responding, “It’s a good idea. But it will never happen.” Still, at “whatever meeting I went to I was excited to raise it. Black social work meeting; Black government meeting; Black whatever. I was excited about being around Black people who were political.”

As she did more research on the issue, Lewis began to identify people who “had any kind of tendencies or inclinations toward reparations.” At a conference at Howard University she met Ted Miller who had her contact Irving B. Davis of the Patrice Lumumba Coalition and the Pan African Skills Project. As it turned out, Davis was on his way from New York to D.C. to meet Julius Nyerere, the first President of Tanzania, who would be speaking at Howard. She and Davis met and he introduced her “to a world of people” who had been doing work on reparations. She hosted several discussions about reparations at her home in Potomac, MD, inviting guests such as Queen Mother Audley Moore, James Forman, and others.

As noted earlier, with Davis, Lewis co-founded the Black Reparations Commission in 1978. Their first task was to resolve ideological conflicts in the activist community between pan-Africanism and Black nationalism. Davis, who traveled often and extensively throughout Africa, led the international component, and Lewis headed the national component. Her job was to convince organizations and leaders to make reparations their issue. Through Davis and the Patrice Lumumba Coalition, Lewis met Omali Yeshiteli of the African People’s Socialist Party (APSP), which embraced reparations as one of its platforms. As described in Section III, in 1982, the APSP convened a World Tribunal on Reparations, placing the United States on trial for its crimes against African people and finding the U.S. government in violation of several international conventions. Following the tribunal, the African National Reparations

Organization (ANRO), was founded to carry out the findings and recommendations of the tribunal. Lewis held a national leadership position in ANRO, first as national organizer, and later as national chair. ANRO continued to convene annual tribunals in various states to “assemble evidence from descendants of enslaved Africans impacted by agents and agencies of the U.S. government.” Lewis also became involved with the formation of the National Independent Black Political Party and the National Black United Front, working with Queen Mother Moore to ensure that the reparations issue was a part of their platforms. “We met with every organization with Black or African in their name. This included TransAfrica and other African leaders, activists, and movements. We wanted Africans to take on reparations as a demand rather than affirmative action.”

Lewis met Nkechi Taifa (see below) at a meeting to “Free the RNA [Republic of New Afrika] 11.” Lewis raised the reparations issue there, and through Taifa she eventually met Kwame Afoh, Chowke Lumumba, Imari Obadele, and other members of the RNA. True to her mission, Lewis immediately began working to convert them to a reparations agenda. Of the Republic of New Afrika and its co-founder, Obadele, Queen Mother Lewis notes “Imari was more into independence. I was one of the people harping on reparations as the way to independence. Because of the way we were educated or miseducated, people wouldn’t understand why one would want to be separated, when so many have been working for real citizenship and integration. A reparations movement would help them understand.” When Davis lost his battle with cancer, Lewis continued to work “to have other organizations adopt reparations as *their* issue: Domestic or international. Housing, jobs, education—people needed to see each issue as a reparations issue. We wanted to unify such demands under reparations.”

Eventually, Lewis met Adjoa Aiyetoro, who had been inspired by ANRO’s “Uncle Sam Owes You” reparations recruitment posters. Aiyetoro asked her to help form a new coalition on reparations that would focus on the mainstream using legislation and litigation strategies. As co-chair of the Black Reparations Commission, Lewis was happy to work with anyone willing to adopt reparations as their issue. She was one of the founding members of N’COBRA. Lewis worked to promote reparations and found N’COBRA’s International Commission in line with her interests. Eventually, Lewis became co-chair of the organization, although she was never interested in being in a leadership position. “I was going to give it my all in a position or not. I just wanted other people in organizations to see their issue as a reparations issue and work to make reparations a reality. As co-chair of BRC, my job was to convince people of that.” In her capacity as co-chair of NCOBRA, “I was a member of all the Commissions. Legal strategy sounded interesting. I was more into the legislative approach, as litigation could go on forever. Legislation could happen overnight.” Despite her doubts, a year or so after the Reparations Litigation Committee was formed Lewis began to participate in it, emphasizing “Once I got involved I stayed involved.”

When asked to describe her contributions to the Committee, Queen Mother Lewis responds, “I don’t know. As national co-chair of N’COBRA I brought a certain kind of listening to the committee. And I could report the value of the legal strategy to people who were non-believers.” In fact, Queen Mother Lewis includes herself as a “non-believer” initially, preferring direct action, legislation, or international approaches over litigation. (In fact, Lewis was also co-chair of N’COBRA’s International Commission.) Yet, Lewis came to be more ambivalent about the legal approach. Ultimately Lewis

appreciated the Litigation Committee’s work as it began to identify issues and to conceptualize injunctions and other remedies. “If we knew what was wrong, we could begin to fix it, immediately.” She found that “legal strategy has a way of framing an issue or a question that will help people understand the harm and the remedy.” Still, she is emphatic: “I have a problem with the law. The law was part of the injury. It was crafted to aid and sustain crimes against humanity. The law was criminal and remains criminal for descendants of enslaved Africans. Criminal law said it was all right to take you from your family; to come get you if you escaped to freedom. To kidnap you, sell your children, or punish you for acting like a human being. Very problematic. I get agitated when I hear the statement ‘we are a nation of laws.’ Never mind that the laws were/are used to terrorize innocent people. I’ve got a big problem with the law as we experience it under slavery, Jim Crow, racial profiling, current mass incarceration, and the criminal justice system.” Yet, part of the virtue of a legal approach is that “The law has to be on trial.” In the end, Queen Mother Lewis characterizes the Committee work as “a healing experience that offered hope for a people.”

With regard to challenges the Committee faced, Queen Mother Lewis believes it was hindered by process issues and “what I now recognize as Post Traumatic Slave Syndrome, based on the work of Joy DeGruy. We have some survival strategies that no longer serve us.” Lewis characterizes the Reparations Litigation Committee as composed of “very brilliant and talented people who had some very strong opinions and approaches and who wanted to prevail. We did okay, but we could have done better.” She continued, “There was competition where coordination and collaboration would have served us better, and we bumped into a wall where we needed to deal with our personal transformations and gain facility with transformational tools to navigate our own disagreements.” Lewis also notes that the Committee was under pressure to avoid creating bad precedents, operating at time when “a lot of people were rushing out to be first in filing reparations lawsuits. We were more focused on winning than being first.”

As to the current state of the reparations movement, Queen Mother Lewis describes herself as “disappointed, but undaunted. Some of the same people who thought we would never see reparations, thought we would never see a Black President. Sometimes a loss is preparation for a bigger win. It helps to point our direction. We’re still looking for the issue that will be the one that will win in the court of public opinion.” She concludes that “Slavery is still alive in the U.S. through the criminal justice system. The white supremacist mentality is also alive; slavery is internal, outsourced, and global again. So is the culture of disrespect for African people. We have to be attentive to how slavery is present today—how it has morphed.” As for the reparations movement itself, “It’s not over until we are a free, self-determining, repaired people. It’s not over until we say it’s over.”

Kalonji Olusegun²⁷²

Kalonji Olusegun was born in 1930 to parents who had both immigrated from the Caribbean. His mother was from Jamaica, where she had been raised Cinderella-like by her aunt. His parents he described as “illegal immigrants.” His father had come to the United States from St. Kitts on a contract to work in Midwestern wheat-fields, but stayed

²⁷² Telephone Interview with Kalonji Olusegun, N’COBRA Litigation Comm. Member (Jan. 14, 2010).

in New York City with a dream of having his own business. His father worked in a munitions factory during World War I, subsequently becoming a U.S. citizen. His mother took advantage of English law allowing travel freely to other places in the British Empire, without the need for passport or visa, and stayed in NYC instead of continuing her trip to Canada. Olusegun was the oldest of two children; his mother had been an only child, and she was “determined he would have company.” Olusegun characterizes her insistence as almost prophetic as his brother died, of spinal meningitis, a week before Olusegun left home to go to college, at Lincoln University in Pennsylvania.

The family initially lived in Harlem, where his father did, for a time, achieve his goal of having his own business. He ran a numbers business in Harlem’s underground economy, and Olusegun describes his father as one of the biggest “numbers bankers” in Harlem, who owned five apartment houses and was the “only Black man in America to drive a Stutz Bearcat.” (“Numbers” were illegal lotteries prevalent in the 1920s, 30s, and 40s.) However the gangster Dutch Schultz was driving Black men out of the numbers business in Harlem, and Olusegun recalls how Schultz’s gang beat his father, hospitalizing him and taking his business. It was at least ten years later that he met and married Kalonji’s mother. His father “was not a skilled person,” and he turned to bootlegging after he lost his numbers business. The family moved from Harlem to the Bronx, where Olusegun notes that, like a lot of families in the 1920s, 30s, and 40s they shared an apartment with another family. His father moved them to a corner house around 224th Street in the Bronx, where they could operate a still, and his mother, an expert seamstress who sewed for weddings, would sew at night to cover for the bootlegging operation. Olusegun remembers the children were never allowed on the second floor of the building where the still was.

Olusegun recalls that his father did not talk much, that he just smiled. He was strict and formal, and Olusegun never saw him without a shirt and tie. Yet his father and his mother together created a household committed to the idea of Black self-determination. His father had been a Garveyite and still had his Black Star Line certificate, which Olusegun gave to Division 330 UNIA/ACL (the division in which Olusegun serves as trustee).²⁷³ He recalls, “My mother would take us to anything Black that happened in the city. I shook Paul Robeson’s hand. My kid brother didn’t wash his hands for over a week.”

Olusegun spent the 1960s working as a Street Club Worker with gangs during the day and working in organizations committed to Black self-determination at night. He recalls regularly attending Malcolm X’s rallies at Mount Morris Park (now Marcus Garvey Park) during the 1960s. Later he joined the Organization of Afro-American Unity, Malcolm X’s pan-African organization, and through the decade participated in “a few nationalist groups in New York and D.C.” In 1970, after a cousin who was a detective told Olusegun he was going to be arrested, Olusegun left New York City. He accepted the position of Director of VISTA (Volunteers in Service to America) first in D.C. and then based in the Philadelphia, Mid-Atlantic region for four years, until the administration changed to Republican. A forced transfer to VISTA’s national office allowed him to take

²⁷³ The Black Star Line was a shipping company established by Marcus Garvey and the UNIA to facilitate commercial transactions and eventually transport Black Americans throughout the African diaspora. Garvey sold shares of stock in the line. See GRANT, *supra* note 130 (discussing Garvey, UNIA, and Black Star Line).

part in many local Black and pan-African groups, culminating in joining Imari Obadele's Republic of New Afrika, soon being Vice-President-elect of its Provisional Government, a position he still holds.

Recalling how he became interested in reparations, Olusegun recalls Malcolm X's skepticism about the feasibility of reparations during speeches in Mount Morris Park. "Observing what was happening to folks in this country," Olusegun paused and continued, "In Malcolm's mind the white man would never repent. So in his mind, it was impossible to build enough folks to force them to reparations. The President of the Provisional Government of the RNA, Imari Obadele, at the NCBL Conference in 1976 put in a call for assistance in reparations. He then assigned me to develop and broaden the support for reparations." Olusegun notes that, although there was substantial overlap between the RNA and the new organization, N'COBRA's founders purposely kept it separate from the Republic of New Afrika and other radical Black organizations because the object was "to entice NAACP types to support reparations. We knew that if people saw RNA as a big part of N'COBRA there would be resistance." After N'COBRA was founded, Kalonji recalls that he and his wife, Kupenda, "manned the national office of N'COBRA for fifteen years," joking that "she did most of the work." Olusegun also served as co-chair of N'COBRA for two terms. When asked about the co-chair format, Olusegun explained that the N'COBRA constitution mandated male and female co-chairs "to keep the balance." He elaborated, "Part of the problem with this patriarchal country is there was too much macho. But Africans in our mind and spirit are for the most part, matriarchal."

As co-chair, part of Olusegun's responsibility was to develop the organization's standing committees, which he termed teams, including the Legal Strategies Commission. When asked about his specific contributions to the Commission and particularly its Reparations Litigation Committee, Olusegun described them as "minimal. We had experts who had spent their lives in their fields. It was an opportunity to learn and share. I spent a lot of time lending a moral and ethical attitude to our deliberations." Olusegun recalls, "We had some very heated discussions in these meetings. Which area, which need for repair would be the best to start out with in the law suit. We were very reliant on the experts." He feels the Committee "did a lot of work" from which "a lot of information was made available to the general public and ourselves." For instance, with regard to whether reparations should be available to other groups, Olusegun said, "The more research and work we did, the more it became apparent that Blacks were not the only group of people in need of reparations from America. While perhaps we should be the first, because we were abused for so long, other people have also been terrorized by this country." Reflecting on his time on the Committee, and how he reconciled it with his belief that U.S. legal institutions are illegitimate, he replied, "It's the only tool we have," also recalling a fable in which king Seth is forced by Heru, his conqueror, to follow his own laws and admit his evilness.

When asked about the current state of the reparations movement, Olusegun observes "It's low energy. I really personally feel that we're at a point in this country where we can mobilize by showing Black people how this integration thing that they've imposed on us has taken us away from our path to freedom and sovereignty. I don't think we've had a better opportunity to show people." On the specific question of whether to reactivate

N'COBRA's Litigation Committee, Olusegun was emphatic: "Definitely. I think it's needed. I think it's time."

At the time of the interview, Olusegun was working as a clerk for the 2010 Census. He notes, "I had a difficult time coming to work for this government. But I decided to because the Census can provide a truer picture of the real extent of the damage done to us." (Of President Obama's presidency, and its meaning for racial equality and progress, Olusegun said, "Obama is an open door. If we treated him the way he asked folks to treat him, he'd be in LBJ's position and have to go our way.") Olusegun concluded, "This movement is not about integration; it's about freedom. I'm very hurt. I'm so glad I have dual citizenship. These are the biggest racists, rapists, pirates, and vultures. It's so unfair how we have been conditioned. The complicity hurts me—the manipulation of the common man. They freed the slaves to enslave the world and white folks." Finally, Olusegun recalls he grew up "a gang kid" who learned the way to handle bullies was to "light into the biggest one and embarrass him." The United States "is the biggest bully going. And I've had a ball, lighting into him."

Rosaline Preudhomme²⁷⁴

Rosaline Preudhomme's mother and two siblings immigrated to the United States from Barbados in 1961, when Rosaline was 16 years old. Her father joined them in 1963. Her parents were teachers in Barbados and New York. When Rosaline arrived with her family in New York, her mother learned that she and her three children could not live with Rosaline's grandmother. The family was split up, and Rosaline and her sister, Margaret, were sent to live with her mother's sister, the late Mildred Scott, in Brooklyn. This started Rosaline's commitment to racial justice activism.

Rosaline's aunt came out of the Marcus Garvey Movement. Her grandmother bought shares in Garvey's Black Star Line.²⁷⁵ Once Rosaline and her sister Margaret began living with Mildred Scott, they accompanied Scott to meetings of activist groups demanding racial justice. Scott, the late Sonny Carson, and Sam Pinn were co-founders of Brooklyn CORE (Congress for Racial Equality). Rosaline's first brush with civil disobedience came when CORE demonstrated in front of the construction site for the Down State Medical Center, a facility constructed by the State University of New York (SUNY) system's medical school. They were demanding that SUNY hire minority contractors and workers to integrate the all-white work site. Rosaline and others were arrested for engaging in civil disobedience by blocking the cement trucks from coming onto the site. The demonstrations caught the attention of the Rev. Dr. Martin Luther King who urged ministers in Brooklyn to get involved.

Preudhomme's activism continued over the years. She was the president of Brooklyn CORE's youth group and the youth delegate to the first convention of the National Black Political Party in Gary, Indiana, in 1972. She joined the National Association of Black Social Workers (NABSW) after taking the position of Deputy Commissioner of the New York State Office of Children and Families where she worked under the leadership of Leonard Dunston, Commissioner.

²⁷⁴ Telephone Interview with Rosaline Preudhomme, N'COBRA Litigation Comm. Member (Dec. 3, 2009).

²⁷⁵ See *supra* note 273.

Rosaline's support for reparations began at the convention in Gary where reparations became part of the platform. Reparations was also a major issue in Brooklyn CORE. She met Adjoa Aiyetoro at NABSW conferences as well as at a meeting with the National Black United Fund. She invited Aiyetoro to be a speaker at an NABSW conference in 1995. Aiyetoro invited Preudhomme to become a part of the Reparations Litigation Committee where Preudhomme worked actively until 2004.

Preudhomme's assessment of her work with the Reparations Litigation Committee and her critique of the challenges of and disappointments with the Committee seem to be a part of the same fabric. Her contribution was to help the Committee remain focused on the work at hand; and, in fact, she led the Committee in developing a strategic plan in 2002. She consistently attempted to frame the discussion and help the Committee focus on concrete, specific objectives. Preudhomme said the major challenges and weaknesses were keeping the egos of individual members from interfering with the Committee's focus on concrete objectives, having Committee members see the importance of subordinating their egos to the tasks, and encouraging Committee members to allow the leadership to function. She found it disruptive to the work that some Committee members would contribute in one meeting and then not come for several meetings or come and stay only a brief time. In addition, some people did not follow through on important assignments. Undergirding all the challenges and disappointments, however, was the lack of resources to do the work required.

Preudhomme sees successes in the Committee's work despite the challenges and disappointments. The primary success was that a number of good papers were developed on various topics related to the reparations litigation work. The work kept N'COBRA out front on the issue and focused the reparations discussion. She now feels that the litigation strategy, as well as the reparations movement in general, has lost its traction. She is of the opinion that someone needs to seize the movement and drive it forward, showing how many public policy concerns about the status of Black people in the United States are tied to reparations. She would be willing to participate in this re-energizing of the reparations movement with people who have the commitment and energy to invest in it.

*Ajamu Sankofa*²⁷⁶

Born in 1949, Ajamu Sankofa grew up in a lower middle-class family, just north of Soldier's Home on North Capitol Street in Washington, D.C. Sankofa has an older sister. His father was the first African American to get a permanent job as a printer with the *Washington Post*. Sankofa describes his father as a "man's man" who was "proud of being Black but not politically active." His mother was a uniquely talented homemaker who "sewed and cooked from scratch" and whom he described as an "amazing caregiver." His parents were married for sixty years until his dad's passing. Sankofa's home had racial pride, although not "an analysis of it."

Sankofa attended Roosevelt High School from which he won a scholarship to Bowdoin, a highly regarded liberal arts college in Maine. Roosevelt, with a predominantly Black student body, was known as an academic high school; Sankofa was the president of his senior class. Like the class valedictorian two years earlier, Sankofa

²⁷⁶ Telephone Interview with Ajamu Sankofa, N'COBRA Litigation Comm. Member (Nov. 29, 2009).

had not applied for the prestigious scholarship. (Sankofa's older sister graduated from George Washington University, located in the District of Columbia). In 1967, when Sankofa arrived, out of a student body of 800 Bowdoin had only fifteen Black students who, he remembers, "lived, worked, and organized together." He recalls, "I experienced culture shock at Bowdoin." Although deeply rooted in Bowdoin's academic life, after King's assassination and the political aftermath, Sankofa realized that, "at a very deep level I have a different reality" from the white students.

After college, Sankofa volunteered for VISTA in St. Louis, working in a GED program that exclusively serviced recently incarcerated juveniles. After VISTA, he worked for the Peace Corps, recruiting and placing volunteers around the world. However he resigned after becoming disenchanted with the Corps' "imperialism, displacing job-seeking Puerto Ricans with middle-class white kids from the U.S." After leaving the Peace Corps, Sankofa worked for the NYC Water Department and organized a rent strike in the Brooklyn apartment complex where he lived. There were 600 apartments, in four buildings. The tenants kept their rent out of escrow, which the court eventually approved, and used it to make their own repairs. Sankofa observes this worked for a year until the effort collapsed because the landlord would not maintain the repairs and improvements tenants had made and that the court had ordered. Sankofa then worked as an affirmative action specialist for New York State and later as a machinist apprentice at the General Motors Plant in Schenectady, NY, during which time he was an active member of the Socialist Workers' Party.

In 1985, Sankofa attended Antioch Law School in Washington, D.C., which had been started by legal services lawyers Edgar Cahn and Jean Camper Cahn to educate highly trained advocates for the disenfranchised. He graduated in 1988, which was Antioch's last class, and, believing deeply in the school's mission, worked to create Antioch's successor, the University of the District Columbia Law School. After graduating, Sankofa did an internship with the ACLU National Prison Project while waiting for his bar exam results. During the internship, he met Adjoa Aiyetoro, who would later become the chair of both N'COBRA's Legal Strategies Commission and later its Reparations Litigation Committee. Sankofa credits Aiyetoro as an extraordinary mentor, recalling that "Adjoa was behind me the first time I stood alone as a lawyer." Sankofa later became a staff attorney at the Project and directed their AIDS project where he drafted the nation's first model policy for the prevention of HIV/AIDS among children who were incarcerated.

Through his relationship with Aiyetoro, Sankofa became involved with N'COBRA, helping to draft its Articles of Incorporation and ultimately joining the Legal Strategies Commission and later helping to found the Reparations Litigation Committee. He viewed his decision as a "logical extension" of his work with Aiyetoro and his respect for her as a lawyer. Still, coming from a "Marxist perspective" Sankofa had doubts about litigation and legislative approaches to reparations. "I knew that was not where most of our emphasis should be. I had too much training and experience to think otherwise."

Sankofa had begun to embrace a leftist and Marxist oriented politics while at Bowdoin. However, even to this day, he has never considered himself an atheist. He recalls a seminar on Sartre at Bowdoin as well as his independent studying of Herbert Marcuse and Erich Fromm; this intellectual investigation began to shape his own political philosophy. After Bowdoin, he spent his political life as a grassroots political activist,

“putting ideas into practice in the streets.” He had a “natural instinct towards anarchism in the best sense of the word, developing my own critical thinking skills.” This resonated with what his mother had taught him, “to stand up, look people in the eye, and question what you were being taught.” In the 1970s he worked with the African Liberation Support Committee (ALSC), which he describes as a “Black liberation organization, with a Maoist orientation” that gathered and sent food and money to support revolutionaries fighting to overthrow white supremacist governments in southern African government.

As mentioned above, Sankofa’s Marxist influenced world-view left him highly skeptical of N’COBRA’s organizing strategy to win reparations. On the other hand, Sankofa was very much “in synch with most of the nationalist sentiments” he perceived in the fledgling organization. They resonated with his memory of white revolutionaries, “trying to tell Blacks how to struggle.” He recalls Brenda Stokely, a Black woman in ALSC, urging “the importance of oppressed people speaking for ourselves” and Trinidadian Marxist C.L.R. James’ arguments with Trotsky. Sankofa emphasizes, “It was important to me to support Black people at whatever level they were at in struggling for freedom” and N’COBRA was filled with “Black people working hard at their best level of understanding.” Hence, Sankofa decided to join N’COBRA and “to help push a leftist class struggle agenda” within the organization.

When asked about N’COBRA’s receptiveness to his political philosophy, Sankofa comments that “N’COBRA has so many political tendencies within it that it was okay to have my bent.” Also, Sankofa is openly gay, something about himself that he “knew early on.” (He recalls reading James Baldwin’s *Giovanni’s Room* in his early teens; “Baldwin gave me my voice.”) When asked whether being openly gay within N’COBRA caused any tensions, Sankofa observed, “None of the brothers or sisters disrespected me; they actually opened up space for me to work.” This conformed to earlier experiences in which Sankofa had found “working-class solidarity” while working as a ditch digger for the NYC Water Department. “I dug as deep a hole and as fast, and that’s what my fellow workers really cared about.” Sankofa elaborates, “Too many of my friends were dying of AIDS to let people stop me, because of their perception of my sexuality, from working on things that are important to me.” Sankofa concludes that being Black, openly gay, and “a scientific revolutionary socialist among progressive and radical Black nationalists has not been easy; it has required courage, intellectual strength, and integrity. In the long run, everybody benefits.”

When asked about the challenges the Reparations Litigation Committee faced, Sankofa notes a few: “Reparations for Black people of African descent residing in the United States was a case of first impression that was being conceived in a very hostile domestic political and judicial climate. This led to the need to figure out a way to survive several formidable procedural challenges; it eventually led to fatigue within the Committee.” He also believes the Committee was hindered by ideological divisions. For example, Imari Obadele, a Committee and N’COBRA board member “viewed N’COBRA as an appendage of his organization, the Republic of New Afrika (the RNA), and a vehicle to rebuild it.” Sankofa believes this tendency was made stronger because N’COBRA’s leadership lacked a “strident, cogent, and smart approach to bringing in people who were not declared Black nationalists.” He emphasizes though, “This was not Imari Obadele’s fault; indeed, Obadele had made a monumental contribution to N’COBRA and the reparations movement in the United States. Hence, N’COBRA failed

to build a broad mass base within the ideologically diverse Black communities residing in the U.S., which would have been better positioned to support the litigation effort. Accordingly, the Committee never fully followed up on its legal work.”

Sankofa also believes that the Committee itself suffered from a “bourgeois nationalist perspective” or, more specifically, a belief that “a legal strategy within a bourgeois state would be sufficient to bring about revolutionary change instead of being *part* of a larger strategy where a class struggle political approach would be dominant. Further, N’COBRA remained wildly deferential to the Democratic Party while maintaining a political base limited to Black nationalists, an insufferable contradiction.”

Lastly, N’COBRA itself needed to develop “a continuity of work style.” Part of the work of N’COBRA’s annual conferences should have been to build on previous conference achievements. Instead, Sankofa felt that each conference started the process afresh. Also, the annual conferences appeared filled with “too much kente-cloth wearing feel good” interactions in lieu of solid political analysis that created building blocks for continuing work that was strategic and where activists were held accountable. On the up side, he believes the Reparations Litigation Committee did produce “a solid reparations legal theory” that pushed the reparations movement forward. “This, in decisive measure, was due to the tenacious efforts of Adjoa Aiyetoro.”

Sankofa continues to embrace a “revolutionary socialist” approach to political action. He is currently the chair of the Private Health Insurance Must Go! Coalition, a NYC based coalition of over 30 grassroots organizations demanding a national single-payer healthcare system in the United States. He also coordinates the Urban Leadership Program at the Murphy Institute for Worker Education and Labor Studies/CUNY and is an Adjunct Professor in the graduate program of Urban Affairs at Queens College, CUNY. Sankofa similarly sees “Obamaism” as “a morphed version of Kennedyism.” When asked about the implications of a Black president for reparations politics, Sankofa said, “The presidency has been deracinated, but white supremacy remains intact. Obama’s role is similar to JFK’s. He puts a brilliant Boy Scout face on U.S. imperialism and the worst aspects neoliberal globalization. He brings competence, charisma, and charm back to the task of imperial governance. But the task remains the same, to dominate and exploit.”

When asked about the current state of the reparations movement, Sankofa is optimistic. He notes that in the late 1990s the movement developed an emerging narrative and created nascent institutions and new networks among Black activists. He believes this is N’COBRA’s chief legacy. What is needed now is an “authentic revolutionary strategy.” “The proof will be in the pudding.”

Nkechi Taifa²⁷⁷

A student of Black History since she was eleven years old, Nkechi Taifa’s primary resource was the library in her parents’ home. Both parents were educators in Washington, D.C. As a young child she remembers looking at *A Pictorial History of the Negro in America*. She was moved by the picture of Emmett Till. It was significant to Taifa that the incident happened the year of her birth, 1954. She thought such treatment of Black people had ended long before then. From eleven years old until her junior high

²⁷⁷ Telephone Interview with Nkechi Taifa, N’COBRA Litigation Comm. Member (Nov. 30, 2009).

school years, while other girls were reading romance novels, she was engrossed in books about Black people and Black History. She took her first course in Black History when she was in 8th grade at Rabaut Jr. High School.

The history of discrimination stunned her. She was particularly moved after learning that the Daughters of the American Revolution would not allow the renowned opera singer, Marian Anderson, to sing in Constitution Hall in Washington, D.C. More shocking to her, however, was learning that discrimination had not ended.

In high school, her interest in racial justice took a more radical direction. The Black Panthers were active in Washington, D.C. She began taking their Political Education classes and selling their newspapers. She did not join the Black Panthers but deepened her knowledge about the conditions of Black people and strategies to address these conditions. Taifa doesn't know whether her parents were aware of her activities with the Black Panthers. Taifa describes her parents as protective of her and her siblings, yet allowing them some freedom to move around in their pre-teen and teenage years. Taifa describes herself as a good girl: very innocent, naïve, and interested in racial justice.

Taifa turned to more local activism when she became an administrative assistant for *Blackland News Magazine*, a grassroots activist organization formed to focus on local and national issues of concern to Black people. While working with *Blackland News Magazine* she was introduced to many old copies of Black magazines. She was still a voracious reader of Black History so she took advantage of this wealth of knowledge.

Between high school and college, Taifa was involved with many organizations that focused on racial justice. In her second year of college Taifa was introduced to the Republic of New Afrika (RNA). She became active in the RNA by becoming involved in its first National Black Elections in 1975. From 1975 to 1978, she was chair of the National Committee to Free the RNA 11. She advanced through the leadership of the RNA serving as the Chair of the People's Center Council and the Minister of Justice. Her activism around reparations for Black people started with the RNA. She included this demand in speeches, lectures, and as part of her political work.

Taifa is a founding member of N'COBRA. She was attracted by its goal of broadening the movement by taking it to the mainstream. It excited her because that was the reason she went to law school: to take issues from the fringe to the mainstream because a law degree lent credibility. Taifa was a member of the Legal Strategies Commission and led its legislative work until N'COBRA decided to form a separate Legislative Commission in 2000, which she chaired. She was also an active member of the Reparations Litigation Committee from its inception. She helped sharpen the legal analysis with respect to the Criminal Punishment Subcommittee's complaint work. She opined that the challenge to the Committee was its inability to accept a less than perfect document. Indeed, her major disappointment with the Committee is that it did not file its own complaint and bring a Johnnie Cochran or a Charles Ogletree onto the Committee as an active member. Her view is that the Committee "missed the moment."

Taifa is proud of the Committee's work in taking the reparations issue to the mainstream and inviting the top thinkers on racial justice and racial activism to come together to discuss reparations and assist in formulating litigation strategies. To Taifa, the Committee served as a "legitimizing" of the Reparations Coordinating Committee

formed by Randall Robinson and Charles Ogletree and “laid the groundwork for Robinson’s book, *The Debt*” because the issue was not foreign to the potential readership.

Despite her commitment to reparations, Taifa is not sure she would become involved in a reactivated Reparations Litigation Committee. It depends on a lot of factors, including the conditions at the time, funding, and mass support. The loss of the 1921 Tulsa Race Riot case was “a huge slap in the face.” She asks “what more do you want—there are living victims.”

V. LESSONS FROM THE MOVEMENT

N’COBRA has received only minimal attention in legal literature as well as in historical accounts of reparations. Yet it has been a major actor in contemporary reparations activism, continuing in the tradition of historical movements and confronting many of the same challenges.

Like Callie House and the Ex-Slave Pension Association, N’COBRA has sought to build a racially inclusive organization that would be under Black leadership. Relatedly, it grew out of radical and Black nationalist roots, but also with an express goal of connecting with mainstream and elite Black individuals and organizations. The reparations movement has been more successful in attracting elite Blacks than at earlier points. The RCC, for instance, includes a diverse group of Black lawyers who have joined in reparations litigation. Similarly, N’COBRA continued to mediate tensions over strategy. As noted, the formation of a Legal Strategy Commission followed by a Litigation Committee signaled a shift in N’COBRA’s strategy. Yet individual members of the Commission and the Committee were able to mediate their own conflicts and skepticism over the legitimacy of legal institutions in much the same way that their predecessors had. They viewed legislation and litigation as not just end goals, but also instrumentally. In fact, encouraging Representative Conyers to introduce H.R. 40 has gone a long way toward making reparations a legitimate topic of political debate and discussion. And, as was the case for Callie House and Queen Mother Audley Moore, taking reparations to the courts and the legislative branches also sustained members’ interests, as well as brought in new activists and supporters.

Social movements scholarship focuses on how activists and organizations mobilize resources to a common political goal. What one finds reflected in these seven interviews is the energy and commitment it takes for a multi-ideological group to work through to a common resolve. If the goal of social movements is to propel issues from the “periphery to the center of American political life,” then, coming from diverse backgrounds and ideological commitments, these members found common cause in trying to publicize and mainstream the Black reparations cause.²⁷⁸ Importantly, despite their association with Black nationalism, which many view as sexist, the Litigation Committee was arguably *more* open to leadership by women and sexual minorities than other, more mainstream and elite Black groups. In the end, they followed both Callie House and Queen Mother Moore in trying to mobilize a new, contemporary reparations movement.

²⁷⁸ RHODA LOIS BLUMBERG, CIVIL RIGHTS: THE 1960S FREEDOM STRUGGLE 1 (1991).

CONCLUSION: “REPARATIONS ASCENDANT”²⁷⁹

Frequently the reparations debate is cast in racial terms, as a conflict between whites and Blacks. Alternatively reparations claims are often dismissed as “fringe” or “naïve” because of the lack of doctrinal precedent and significant procedural hurdles. This Article has taken a different approach, conceiving reparations as a social movement with a rich set of historical and contemporary individuals and institutions. It has tried to show how approaching reparations in this way illuminates the distinct and at times competing visions and goals of reparations activism, in the process lending a more nuanced and intricate view of Black activists’ conceptions of and negotiations over political subjectivity for their community.

The civil rights movement is the classic study of social movements.²⁸⁰ As this Article illustrated, there can be a tendency to conflate reparations with civil rights, to cast the claims of reparations activists so broadly that it is no longer distinguishable from broader calls for Black equality. Our Article has urged a narrower, and a more precise definition of reparations—as an entitlement for wrongs done—distinct from civil rights not only in its conception of injury and remedy, but also with a distinct history of activism. Much outstanding scholarly work across disciplines has been done on the civil rights movement—on its chronology and periodization; mobilization processes; cultural symbols, oratory, and meaning-making; and its internal divisions and tensions over matters ranging from tactics and goals to class and gender dynamics.

The Authors would like to call for similar work to be done on reparations. Social movements scholars focus on what set of factors give a traditional political space oppositional content. The civil rights movement produced a sort of moral authority that completely altered what was considered “natural” in terms of U.S. race relations. Stewart Burns has characterized civil rights’ ideological framing as a “battle for democracy.”²⁸¹ It effectively mobilized oppositional consciousness through its protest politics, *e.g.*, sit-ins, boycotts, and strikes, as well its cultural productions (songs, oratory, and “letters”) and institutional collaborations with Black churches and colleges. And, of course, the civil rights movement was handed a ready set of villains—George Wallace, Bull Connor, Orville Faubus, and the array of anonymous thugs and supremacists—that drew the attention of the national media and eventually the sympathy of the nation.

Through its consideration of historical and contemporary reparations activism, this Article has shown that the reparations movement proceeded differently, as an alternative site of struggle for Black freedom. Approaching reparations as a social movement de-centers the Black church and college as the dominant institutions, protest politics as the dominant form of activism, and rights struggle as the dominant mode of legal engagement. More work needs to be done on the reparations movement’s distinct periodization, strategies of mobilization, ideological frames, cultural productions, and internal dynamics, all no less diverse and contested than within the civil rights movement. If the primary factor triggering social movements is “the ebb and flow of political struggle,” what influenced and shaped what we might call the “long reparations

²⁷⁹ REPARATIONS, *supra* note 3, at 53 (Brophy’s term for the current reparations moment).

²⁸⁰ *See, e.g.*, POLITICAL PROCESS, *supra* note 134 (using civil rights struggle to understand emergence of social movements).

²⁸¹ STEWART BURNS, SOCIAL MOVEMENTS OF THE 1960S: SEARCHING FOR DEMOCRACY 28 (1990).

movement”²⁸² There has been much debate on how “external factors,” such as changes in the media, global politics, and American politics more broadly influenced and was influenced by the civil rights movement. There needs to be similar work on the history of reparations activism. Finally, the sustained study of how reparations activists interacted with state actors may open new chapters in both legal and political history, including how we understand the first amendment and government harassment of citizens asserting equality or self-determination claims. Students of American history, politics, and sociology, not to mention law, know strikingly little about reparations as an activist movement. This Article has been one small effort to rectify that.

In this initial effort to construe reparations as a social movement, this Article proceeded in four steps. First, it reviewed the history of the movement through some of the leaders and institutions who were the antecedents to the modern reparations renaissance. The next step was to derive a few latent themes from this movement history. Until very recently, reparations proponents overwhelmingly came from the Black poor and working class, not its elite. Unlike the civil rights movement, in which elite and non-elite Blacks both participated actively, at times battling over diverging visions, until very recently the Black elite eschewed reparations. Hence for most of its history, reparations was a movement dominated by the Black non-elite and their political vision. In addition, exploring reparations activism reveals competing views about the legitimacy of law. Among reparations advocates, the Article has found both skepticism and a cautious confidence, or instrumental investment, in U.S. political and legal institutions. The third theme was to suggest that reparations embodies a long-standing debate among Blacks over what racial liberation would look like. Both Black nationalists and those seeking integrative citizenship have viewed reparations as instrumental to their vision.

Next, viewing reparations as a social movement, rather than a legal issue in the abstract, this Article turned its attention to the National Coalition of Blacks for Reparations in America. Although part of the activist tradition of Callie House, Queen Mother Audley Moore, and James Forman, N’COBRA has been largely overlooked in reparations history, marginalized perhaps because of its association with non-elite, nationalist approaches to racial liberation. This Article offered a detailed history of N’COBRA’s founding, organization, and launching of its Reparations Litigation Committee. It described N’COBRA’s goals and mission, which were to publicize and “mainstream” the question of Black reparations. The Article suggested this met with mixed success—N’COBRA succeeded in helping to bring reparations into public debate, although the organization itself was not able to attract large numbers of elite or mainstream Blacks.

In the final step, the Authors summarized interviews with seven N’COBRA Litigation Committee members to situate their biographies within both the broader history of the reparations movement as well as N’COBRA’s institutional history. These interviews suggest the extent to which contemporary reparations activists continue to grapple with negotiations with the Black elite, ambivalence over the legitimacy of legal institutions, and debates over ideology and definitions of racial liberation.

In the end, viewing reparations as a social movement sets a research agenda for historical and sociological work on reparations activism that the Authors hope will begin to parallel the rich work on the civil rights and other, more mainstream Black freedom

²⁸² TARROW, *supra* note 134, at 10.

movements. In addition to recovering individuals and institutions mainly lost to the history of Black activism, the Article also contends viewing reparations as a social movement also casts the contemporary reparations renaissance in a different light. Instead of evaluating, and often dismissing, reparations solely as a legal claim, *i.e.*, whether it is doctrinally or legally feasible, viewing it as a social movement suggests an alternative metric for measuring its success—in terms of its tactical innovation, altering public debate, and mobilizing new oppositional consciousnesses.

APPENDIX

INTERVIEW QUESTIONS FOR PARTICIPANTS IN N'COBRA'S LITIGATION COMMITTEE

Thank you for agreeing to participate in this project.

1. When and how did you first determine that you supported reparations for Black people in the United States?
2. Do you support reparations more broadly for Black people in the Diaspora? How do you define Diaspora?
3. Prior to becoming involved with N'COBRA what did you do to support reparations for Black people?
4. When and how did you become involved with N'COBRA? What attracted you to the organization?
5. Is it correct that at some point you became involved with N'COBRA's Litigation Committee? When and how did this occur?
6. How long were you active with the Litigation Committee?
7. How would you describe your contribution to the Litigation Committee?
8. What were the challenges that faced the Litigation Committee?
9. What were some successes of the Litigation Committee?
10. What would you describe as your personal disappointments or moments of pride for the Committee?
11. What sense do you have of where the litigation arm of the reparations movement stands at this time?
12. What sense do you have of where the movement for reparations stands generally at this time in the U.S. and in the Diaspora?
13. Would you support a reactivation of a Litigation Committee to continue examination of the possibility of litigation? Why or why not?

14. Who are your personal role models in the civil rights/human rights/freedom struggle?