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## Documenting the Costs Of Slavery, Segregation, and Contemporary Discrimination: Are Reparations in Order for African Americans?

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George Warren Brown School of Social Work

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Without significant reparations for African Americans, the nation's deepest racial divide will never be eliminated. As Randall Robinson (2000: 204) has recently put it in his book, The Debt, if “African Americans will not be compensated for the massive wrongs and social injuries inflicted upon them by their governments, during and after slavery, then there is no chance that America can solve its racial problems . . . .” This is a strong statement, but true.

In this article I examine why large-scale reparations should be made to African Americans and how that task might be done. In a pioneering 1973 book, The Case for Black Reparations, a leading Yale law professor, Boris Bittker (1973), argued that the oppression faced by African Americans was more extensive than that faced by other racial groups and thus required major reparations in compensation. At the time, almost no one paid any attention to his analysis. Today, however, the idea of reparations has been resurrected. There are now many voices concerned about the high costs of antiblack oppression over four centuries. It seems ever more likely that reparations of some form will be paid to African Americans over the next half century.<sup>1</sup>

## **UNJUST IMPOVERISHMENT AND UNJUST ENRICHMENT**

What are the grounds for large-scale reparations for African Americans? The rationale for group compensation lies in the stolen labor and lives of the millions enslaved, the stolen labor and lives of those legally segregated, and the continuing theft of labor and lives of those who face contemporary discrimination. This theft of labor and lives was carried out not only by whites acting as individuals, but also, for at least its first 350 years, by various local, state, and federal governments. Whites have been involved individually and collectively in the exploitation and oppression of African Americans for nearly four centuries.

In his probing 1946 book, The World and Africa, the distinguished sociologist W. E. B. Du Bois (1965 [1946]: 37) argued that the poverty in Europe's African colonies was a “main cause of wealth and luxury in Europe.” African resources and development had been sacrificed to make Europe wealthy. There is a similar connection between the immiseration of African Americans and the enrichment and prosperity of European Americans. Over several centuries most whites, as individuals and families, have benefited from antiblack oppression and the transmission of ill-gotten wealth and privilege from one generation to the next. Today, the prosperity, long life expectancies, and high standard of living for white Americans are significantly rooted in centuries of exploitation and impoverishment of African Americans and other Americans of color.

Unjust Enrichment Defined The concept of unjust enrichment is an old legal idea traditionally associated only with relationships between individuals. From a legal perspective, unjust enrichment involves circumstances that “give rise to the obligation of restitution, that is, the receiving and retention of property, money, or benefits which in justice and equity belong to another” (Ballentine 1969: 1320). In U.S. court decisions the defendant has been required to give up the unjust enrichment, including gains later made from it (see Kull 1995). For example, U.S. law does not generally permit a thief's children to benefit from the father's theft. Some have suggested extending the idea of remedies for unjust enrichment to the conditions of group oppression, including that faced by African Americans over several centuries. Whether or not

this might make legal sense under current legal institutions,<sup>2</sup> it is a useful analogy. Indeed, it does make moral sense and might conceivably be one basis for new legal institutions aimed at restitution and reparations for the enrichment stemming from past “crimes against humanity.” Under this latter circumstance, group remedies should encompass stopping the unjust extraction of benefits now and in the future as well as the making of restitution to the victim group for past oppression. Implicit here is the counterpart idea of unjust impoverishment, which describes the conditions of those who have suffered from those being unfairly enriched.

This unjust impoverishment has, on occasion, been recognized by liberal whites. Thus, in a 1984 federal appellate case, Williams v. City of New Orleans, appellate justice John Wisdom argued that the anti-slavery amendments and the civil rights act enacted at and just after the Civil War's end were designed to grant federal power “to provide for remedial action aimed at eliminating the present effects of past discrimination against blacks as a class. Wholly aside from the fourteenth amendment, the thirteenth amendment is an affirmative grant of power to eliminate slavery along with its 'badges and incidents' and to establish universal civil freedom. The amendment envisions affirmative action aimed at blacks as a race. When a present discriminatory effect upon blacks as a class can be linked with a discriminatory practice against blacks as a race under the slavery system, the present effect may be eradicated under the auspices of the thirteenth amendment” (Larry Williams et al. 1984: 1554, 1577). Since there are close historical connections between past and present white privileges and black disabilities, it is not surprising that most whites wish to deny the historical linkages with such phrases as “My family and I never owned slaves,” or the “slavery was centuries ago.” Recognition of historical linkages is essential to build arguments for restitution and reparations for African Americans.

White privilege entails the array of benefits and advantages inherited by each generation of those defined as “white” in U.S. society. These racialized advantages are both material and symbolic, and they penetrate and encompass many interactions among whites and between whites and others over the course of lifetimes. White privilege is ubiquitous and imbedded even where most whites cannot see it; it is the foundation of this society. It began in early white gains from slavery and has persisted under legal segregation and contemporary racism. Acceptance of this system of white privileges and black disadvantages as “normal” has conferred advantages for whites now across some fifteen generations.

Transgenerational Transmission of Wealth Looking at U.S. history, one finds that racial oppression encompasses the intertemporal reproducing of ill-gotten wealth, as well as the organizational structures and ideologies buttressing the reproduction of wealth. Socially reproduced over time are racially structured institutions, such as the economic institutions that perpetuate the exploitation of black labor and the legal institutions protecting that exploitation. Each new generation of Americans has inherited this persisting framework of racial inequality and privilege. From at least the early 1700s to the mid-1800s much of the surplus capital and wealth of the nation's white families and communities came directly, or by means of economic multiplier effects, from the African slave trade and the slave plantations and related enterprises (see Bateman and Weiss 1981; Lebergott 1984). The worldwide trade generated by British and French plantations in the Americas was the source of much capital for European commercial and industrial revolutions. Much of British, French, and American industry, shipping, naval development, and banking was ultimately grounded in enslaved black labor. From the 1600s to

the 1800s the majority of major agricultural exports in the Western-dominated world trade were produced by enslaved Africans. Without this labor, it seems unlikely that there would have been a successful British and U.S. textile industry, and without that first major industry it is unclear how or when Britain and the U.S. would have become industrial powers (Wiecek 1996; Browne 1990). Perhaps the most important technological development of the 18th century, James Watt's improved steam engine, which greatly accelerated industrialization, was bankrolled by British investors with capital accumulated in the West Indies trade in slaves and slave-produced products. Without the often profitable enterprises around African and African American enslavement, it is unclear how or when the United States would have developed as a modern industrial nation (see Solow and Engerman, 1987).

Labor Stolen under Slavery For some fifteen generations the exploitation and oppression of African Americans have redistributed income and wealth earned by black labor to generations of white Americans, leaving the former relatively impoverished as a group and the latter relatively privileged as a group. Consider just the value of the African American labor that was expropriated. The white owner's cost for maintaining an enslaved African American was generally very low, and under many circumstances large profits could be generated off the labor of such a subordinated worker (Du Bois 1992 [1935]). Larry Neal has calculated that the current (1983) value of the slave labor expropriated by whites from 1620 to 1865 ranges from about \$1 trillion to as much as \$97 trillion, depending on the rate of interest chosen (Swinton 1990: 156). James Marketti has estimated the dollar value of the labor taken from enslaved African Americans from 1790 to 1860 at, depending on the historical assumptions, from \$7 billion to as much as \$40 billion. Such a figure roughly indicates what black individuals and families lost in income because they did not control their labor.<sup>3</sup> Marketti suggests that, if that stolen income is multiplied by taking into account lost interest from then to the present, the current (1983) economic loss (income diverted) for black Americans ranges from \$2.1 to \$4.7 trillion (Marketti 1990: 118).<sup>4</sup> Updating these 1983 estimates places the current value of the diverted labor income in the trillions of U.S. dollars.

Numerous white analysts have attacked the idea of white society owing such back wages for slavery; they argue that figuring out the debts of distant history is just too difficult (see Warren 1965: 434-35). Yet such an argument almost always fails to note that the damages done to African Americans did not end with slavery, but persisted for another one hundred years in the form of legal segregation and then for several more decades in present-day discrimination. The era of black enslavement was not followed by a century of justice and equality.

Labor Stolen under Segregation After the Civil War, white southerners used terrorism for a few years to win a major goal of that war--the continued oppression of African Americans. Organizing Ku Klux Klan violence and other coercion, whites in all classes worked to deny the newly freed blacks access to land, credit, political power, and education (see Ransom and Sutch 1981: 150-51). There was much other racial discrimination, and soon legal segregation was established in all southern and some northern states. Significantly, government officials were involved in maintaining racial oppression. Under legal segregation, the economic losses for black Americans were again high. One research study estimated the cost of labor market discrimination for 1929-1969 (in 1983 dollars) at \$1.6 trillion (Swinton 1990: 156). Calculating the cost of antiblack discrimination from the end of slavery in 1865 to the year 1969, the end of legal

segregation, and putting that calculation into year-2000 dollars would likely increase that wage-loss estimate to several trillion dollars.

Continuing Theft of Labor Today Since the end of official segregation black Americans have suffered additional economic losses. A number of economic studies have suggested how much African American workers annually lose from continuing discrimination and informal segregation in employment. For one year in the 1970s the estimate of the cost of continuing racial discrimination in employment has been put in the range of \$94-123 billion (Darity 1990: 11). Estimating a dollar figure for the period since the end of segregation to the present day would doubtless bring this figure of lost income and purchasing power from continuing discrimination to another several trillion dollars.

William Darity reminds us that what blacks lose whites often gain: “These are pretty good calculations, but they are all made on the assumption that if racial discrimination were eliminated everything else would be much the same. Discrimination appears as a deadweight loss to all Americans. No attention is given to the interdependence between the incomes of blacks and whites, and the possibility that the incomes of whites are higher because the incomes of blacks are lower” (Darity 1990: 11). Thus, one can see much of these dollar figures as added and undeserved income for white Americans.

Clearly, the sum total of the worth of all the black labor stolen by whites through the means of slavery, segregation, and contemporary discrimination is staggering--many trillions of dollars. The worth of all that labor, taking into account lost interest over time and putting it in today's dollars, is perhaps in the range of \$5 to \$24 trillion.

Other Economic Costs Labor lost means capital lost, both that directly generated and that which might have otherwise been borrowed. As David Swinton has noted, “Discrimination and racism reduced the historic accumulation [of] capital by blacks and increased accumulation by whites. The resulting disparities in ownership of capital are transmitted intergenerationally. These capital disparities would prevent attainment of racial equality even if current discrimination ended and blacks and whites had identical tastes and preferences” (Swinton 1990: 157).

After the Civil War some congressional proposals were aimed at giving those recently freed arable land--the famous 40 acres and a mule. Yet most black families never got access to the land promised, and the inequality in wealth-generating agricultural land has been a major cause of persisting racial inequalities. Passed under the Abraham Lincoln administration, the Homestead Act provided access to productive land and wealth, mostly for white families, from the 1860s to the 1930s. Some 246 million acres were provided by the federal government, at minimal cost, for some 1.5 homesteads. Research by Trina Williams (in this book see pages XXX-YYY ) estimates that--depending on calculations of multiple ownership, mortality, marriage, and childbearing patterns--somewhere between 20 and 93 million Americans are now the beneficiaries of this large wealth-generating program over several generations. Williams (2000) suggests that the most likely figure is in the middle range, perhaps 46 million, a figure equal to about one quarter of the current population.<sup>5</sup> Almost all of these beneficiaries have been white, as only 4,000 African Americans made entries under the Homestead Act. In order to build successful families and provide for their children, parents need access to significant resources,

and land is one major resource. Indeed, Stephen DeCanio's research indicates that those formerly enslaved who were propertyless and emancipated without arable land were fated to endure major longterm economic disparity with whites. The initial gap in land access can be shown to produce the longterm racial gap in income, even without considering other factors (DeCanio 1981).

Added to the lack of land was the rigid legal and de facto segregation that developed in the decades just before and after 1900. This further prevented black Americans from getting good jobs, buying decent homes, and thereby generating the family assets necessary to compete effectively with whites over many lifetimes. There has been relatively little economic inheritance across generations. In contrast, many white families garnered some economic resources in the past and enhanced those assets over generations. Historically, a majority of whites have accumulated material advantages by the transmission of assets such as savings, land, small businesses, or homes. Many decades of discrimination in employment and housing have resulted in black families being less likely to be homeowners. Discriminatory practices in home sales and insurance have long limited the ability of black Americans to build housing equities that might be used to start a business or help children get a good education (see Oliver and Shapiro 1995: 36-50). Because of racial discrimination in securing mortgages for homes, as well as for businesses, African Americans are losing an estimated 100 billion in equity over this current generation as compared to comparable whites. Moreover, over the last few generations this lost home equity doubtless totals many tens of billions of dollars. In addition, recent research indicates that the current white-black differential in assets is not the result of differences in savings rates (Darity and Myers 1998: 150-52).

The Current Bottom Line: Economic Inequality For recent decades U.S. census data show the black median family income to be consistently in the range of 55-61 percent of the white median family income. Today, as in the past, black families face poverty at a much greater rate than white families and an unemployment rate roughly twice that of whites (Darity and Myers 1998: 7-10). Black workers are often the first laid off during economic recessions and the last to be recalled. Coupled with a high unemployment rate is a high underemployment rate. In recent decades this rate has ranged to one third or more of black workers in many communities, a much greater figure than for whites. Perhaps the most dramatic indicator of generations of white access to the acquisition of material and educational resources can be seen in measures of family net worth. The median net worth of white households is about ten times that of black households. In addition, black families have most of the assets they hold in cars and houses, while white families are far more likely than black families to have interest-bearing bank accounts and to hold stock in companies (U.S. Bureau of the Census 1994: xiii-xiv).

## **OTHER PERSONAL AND SOCIAL COSTS**

The costs of slavery and segregation are far more than the direct economic costs. There are many human and community costs. For example, in the United States African Americans average significantly shorter lives than whites. Thus, in 1900 the life expectancy for an average black person was about 32-35 years, some 16 years less than that for a white person (Pettigrew 1964: 99). Today, this black-white gap has closed somewhat. Life expectancy for black Americans is about 69 years, compared to about 75-76 years for whites. In sum, it costs 6-7 years of one's life to be black in America.

Contemporary social science research suggests the many and severe effects that socially generated dehumanization can have on the health of human beings as individuals and as groups. Drawing on recent research, let me describe briefly some physical, psychological, family, and community costs of racial oppression.

The Physical Costs of Racism The stress, anger, and rage created by the practices and prejudices of everyday racism can lead to serious health consequences. When asked in interview studies about the costs of the discrimination they face, black respondents cite a broad range of problems--from hypertension and stress diabetes to stress-related headaches and heart and stomach conditions. One recent study researched the connection between racial stress and high blood pressure for 4,000 black Americans and found that those who reported substantial discrimination tended to have higher blood pressure than those who reported less (Krieger 1999; see Husted 1994).<sup>6</sup>

To illustrate the health impact, let me quote a few black middle-class respondents in recent focus groups that I have supervised.<sup>7</sup> In one focus group a social services coordinator described some physical and psychological costs linked to dealing with hostile whites in the workplace:

I was having severe headaches, and chest pains. It would be times when I would almost be in the office hyperventilating. And it was just a lot of physical things happening to me. I would pull hair more, because, just the stress, you know? You're trying to do so much, and collect your thoughts and do what needs to be done. . . . And the headaches were just terrible, just unbearable. And it's also a psychological kind of ill, in that, well you know, if [white] people are constantly watching you. But it's just amazing the psychological ill that it does to you. And even though you know you're competent. People can do that so much to you . . . they can get in meetings and try to show you up and make you look like you just don't know anything. And it is so many of them, you are outnumbered! Sometimes, you come out, and lash out, and you almost validate what they're trying to say about you, because you feel outnumbered! So, you, you begin to doubt yourself, you begin to psychologically feel somewhat incompetent. So, it can take a toll on you, and I think it takes more of a psychological toll on us than we even care to admit.

In the focus groups several participants gave details on how they came to view their hypertension and other physical ailments as, at least in part, linked to the stress they faced at the hands of whites in the workplace and other arenas outside their homes.

Major Psychological Costs The psychological impact of racism includes a broad range of reactions--from anxiety and worry to depression, anger, and rage. Three decades ago, in what is still the only book on the subject, psychiatrists William Grier and Price Cobbs (1968: 4) documented the anger of black Americans that is created by racial discrimination (see also Cobbs 1988). Today, anger over racial discrimination is still commonplace, and this anger can lead to inner turmoil, emotional withdrawal, or serious physical problems. Commenting on racially hostile or unsupportive workplaces, some focus group participants described general feelings of frustration and anger, while others told of specific incidents that generated these feelings. A common source of anger is racist epithets and similar derogatory references. Thus, a black professional described her reaction to an incident with a white administrator:



I have felt extremely upset, anger, rage, I guess you would call it. One incident that comes to mind happened in a social setting. I was with some, with my former [white] boss and some coworkers and a man who ran a federal program. And we were having dinner, and he made a comment, and he had been drinking heavily. And he referred to black people as "niggers." He's there, and I'm here. And as soon as he said it, he looked in my face. And then he turned beet red, you know? And I said, "Excuse me, what did you say?" And he just couldn't say anything. And then my boss, my former boss, intervened and said, "Now move his glass, because he's had too much to drink." And just making all these excuses. So, of course, I got up and left. I said goodnight, and left. And the next morning, the man called me and apologized. His excuse was that he had been drinking. And I said, "Well, we don't get drunk and just say things that we wouldn't otherwise say. You know, I don't get drunk and start speaking Spanish. This was already in you in order for it to come out."

Much of the cost has to do with sapping physical and psychological energies. A retired educational psychologist explained this eloquently:

If you can think of the mind as having one hundred ergs of energy, and the average man uses fifty percent of his energy dealing with the everyday problems of the world . . . then he has fifty percent more to do creative kinds of things that he wants to do. Now that's a white person. Now a black person also has one hundred ergs; he uses fifty percent the same way a white man does, dealing with what the white man has [to deal with], so he has fifty percent left. But he uses twenty-five percent fighting being black, [with] all the problems being black and what it means (Feagin and Sikes 295-296).

Evidently, racism has been costly in destroying much vital human energy that could have been used in building up a better society.

Accumulating Family Costs In one focus group an engineer made clear the way in which personal energy costs of dealing with whites at work had a family impact. His focus group was discussing the "eight whole hours of discrimination" they experienced daily:

One of the things, though, that really has had an effect on my family personally was, me having [less] time to really spend with my son. As far as reading him stories, talking, working with him, with his writing, and, all of that. And those things really, really hurt us, and it hurt my child, I think, in the long run, because he never had that really. I know when, when the program was really, really running, some, some days I would come home and I would have such excruciating headaches and chest pains that I would just lay on the bed and put a cold compress on my head and just relax. . . . And by the time I come home, I'm so stressed out. And he runs up to me, and you know I give him a hug, but when you're so stressed out, you need just a little period of time, maybe an hour or so, just to unwind, just to relax, to just watch the news or something, to kind of unwind and everything. And you know you're almost energy-less. And then by the time you get home, you have your family.

The pain of workplace mistreatment can have a domino effect, with chest pains and headaches being linked to a loss of energy, and that in turn resulting in less energy for relating to family members.

Some Community Costs The spin-off effects of racial mistreatment in employment include an impact on community. One respondent noted the negative impact on participation in church activities:

I have withdrawn from some of the things I was involved with at church that were very important to me, like dealing with the kids at church. Or we had an outreach ministry where we would go out into the low-income housing and we would share about our services, we would -- And I was just so drained . . . if we are all so drained, and we stop doing that, then we lose our connection. But I, physically, by the time I got home at the end of the day, I was just so tired, I didn't even feel like giving back to my community, I didn't feel like doing anything. And so I withdrew from church activities, to the point where I just really was not contributing anything. And it was pulling all that energy, I was exhausted from dealing with what I had to at work.

The impact of workplace racism is graphically described, for even community activities become more difficult. For many white commentators, whatever antiblack discrimination remains is to be dealt with on an individual basis. However, we see here that the assaults of racism have effects not just on black Americans as individuals but also on larger social circles, for the pain of discriminatory acts are often shared with relatives and friends.

Institutional Costs As these last quotes suggest, there is much more to the costs of four centuries of racial oppression than just the individual and family costs. Indeed, one of the major costs of this oppression is the loss of large-scale institutional development within black communities. Thus, until the legal desegregation of the 1960s it was almost exclusively whites who had access to key types of resources for institution building. For example, after World War I, the Air Commerce Act gave air routes to white-run companies. Access to many government-controlled resources, such as mineral deposits and the radio and television airwaves, were kept from black taxpayers by means of overt discrimination (Cross 1984: 515-18). Today, the lack of resources and wealth links closely to the absence of access to organizations and institutions with a powerful influence in the society. An example of such institutional structures can be seen in the mass media. African Americans have no control over any of major television or newspaper networks, which means that they do not have control over the stereotypical information on African Americans often circulated nationally by these media. Nor can they circulate the positive information necessary for socializing their children and building their communities as effectively as they could if they had the power of the white-controlled corporations that regularly push their interests through the media. African Americans do not even have the power to get the issue of reparations fully into the media for public discussion. They would have such control if they had had equal resources for institution building in their communities over four centuries.<sup>8</sup>

## **REPARATIONS FOR SOCIAL INJUSTICE: SOME EXAMPLES**

In summary, then, each year in the United States millions of racist attacks--blatant, covert, and subtle racist acts--are mounted by white Americans against black Americans in all major institutional arenas--from housing and schools, to workplaces and transportation, to shopping, recreation, and police contacts. If the many instances of discrimination are counted up over the lifetime of a typical older African American, they doubtless reach into the thousands. For all recent and current African American lifetimes taken together they thus mount into tens of

billions of racist incidents. Given this sobering reality, it is obvious that a huge debt is owed to African Americans by white Americans.

Civil Rights Efforts Yet little of this debt has been paid. The proclaimed civil rights laws of the 1960s are thought by many whites to have “solved the problem of race” in the United States. Yet they have brought, at best, modest redress of discrimination and some equality of opportunity in everyday settings. Few of the millions of cases of discrimination perpetrated by whites each year against black targets are ever redressed by private or government remedies. Moreover, recent research on progress in civil rights, including such things as civil rights laws, shows that these policies against discrimination do not represent significant compensation, much less atonement, by whites for racial oppression. These changes did not come because the white majority suddenly become committed to implementing the ideal of social justice. Instead, the civil rights changes and policies that have come since the 1950s are the result of broad social forces coming together: First, the circumstances of recent wars (including the Cold War) have necessitated that the white political leadership seek to reduce internal turmoil in order to create a nation united against an external political enemy--a condition encouraging governmental action to reduce racial conflict. Secondly, change has come when black leaders led community protests pressuring the vulnerable white leaders to act on the nation's social justice ideals. Historical data show that, in bringing racial change, the political and international interests of white America's leaders have been more important than commitments to racial justice (see Kryder 2000; Klinkner and Smith 1999).

In general, the idea of going beyond civil rights enforcement to reparations for African Americans is rejected by most whites. One argument against reparations is that societal oppression against black Americans has been too impersonal for the development of specific remedies. In recent years some federal courts have accepted the view that, while there may still be societal discrimination, no one can determine who in particular is responsible and who has benefited; thus, no compensation is necessary. This assertion contradicts legal views of responsibility in other areas of the law. Moreover, there are numerous examples of reparations and compensation being addressed by U.S. courts or paid by U.S. legislatures. Let us examine a few examples.

Precedents for Reparations: Corporate Cases There are many precedents for the idea of extensive reparations for African Americans. For example, U.S. courts have required corporations to compensate the deformed children of mothers who in the past took harmful drugs during their pregnancies without knowing of the drug's side effects. The courts have held that such harm done to later generations was foreseeable by the corporate executives in power at that earlier point in time. The argument that those executives are gone or deceased--that too much time had elapsed--was not allowed to take current corporate executives and their corporations off the hook (Delgado 1996: 103).

Precedents: Reparations for Victims of World War II Atrocities Significantly, the U.S. government has been very active in efforts to force the German government to make reparations to the victims of Nazi atrocities. As Richard Delgado (1996: 104) has noted, "The United States required that Germany make reparations to Israel and the victims of the Holocaust, even though the Nazi government had been disbanded and most of its leaders executed or imprisoned." For

twelve years the Nazis inflicted extreme repression and cruelties, and millions of deaths, on the Jews in Germany and other Nazi-controlled territories. Later German governments have paid more than \$60 billion in reparations to individual victims of the Holocaust, as well as to the nation of Israel on behalf of those victims, even though that nation did not exist at the time of the atrocities (see Kim 1999). The U.S. has put similar pressure on the Swiss government, which recently offered \$1.3 billion in compensation to Nazi victims to settle a class action lawsuit targeting questionable actions of Swiss banks and insurance companies during the Holocaust.

Moreover, in 1997 the U.S. House passed a concurrent resolution condemning the sexual enslavement of Chinese and Korean women by the Japanese army in World War II. It called on the Japanese government to pay immediate reparations for the enslavement and other crimes and supported an international court ruling of compensation of at least \$40,000 for each victim (House Concurrent Resolution 1997).

Precedents: Token Reparations for Japanese Americans U.S. leaders have recognized a reparations principle in regard to discriminatory action by the U.S. government against U.S. citizens during World War II. After years of resistance to the idea, in the late 1980s the federal government finally agreed to pay modest reparations to Japanese Americans wrongfully interned in concentration camps during World War II. For years Japanese American organizations pressed the U.S. government for repayment of losses suffered from racist government action. In 1987, after years of foot-dragging, the House finally passed a law with an apology for the internment and \$1.2 billion in reparations. Surviving internees or their heirs received \$20,000 for the economic losses and the pain and suffering. As modest as this compensation was, it signaled an official admission of the damage done by governmental discrimination and some willingness to make reparations (Feagin and Feagin 1999: 392-93). Yet, even this modest compensation was not made until Japanese Americans had a strong partner in a now powerful Japanese government and economy.

Precedents: Some Reparations for Native Americans Some reparations have also been provided to Native Americans for lands long ago taken with little or no compensation. In recent decades many indigenous groups have pressed land claims in federal court, and some have won their cases, with monetary compensation or illegally-taken lands restored. For example, in 1980, after a lengthy court battle, the U.S. Supreme Court awarded the Lakota Sioux \$122.5 million for more than 7 million acres taken illegally in the 1870s. Significantly, this cash award was refused by the Lakota, who insisted that their sacred land was not for sale and that the land itself should be returned (Olson and Wilson 1984; Churchill 1992). In recent years Sioux leaders have taken their case to the United Nations, where some have been part of the U.N. committee writing a Declaration on the Rights of Indigenous Peoples. Provisions included in the declaration are the "restitution of the lands, territories and resources" and the "enforcement of treaties." The Native American Rights Fund, a national legal defense firm founded, has represented various tribes in negotiations for treaty-guaranteed natural resources and for restoration of their status as sovereign nations ("Shattering . . ." 1991).

Moreover, on September 8, 2000, at a ceremony marking the 175th anniversary of the Bureau of Indian Affairs, the head of the Bureau, Kevin Gover, described the evolution of the agency from a War Department office to one that supervised the lives of Native Americans on reservations

and noted that “this agency participated in the ethnic cleansing that befell the Western tribes. This agency set out to destroy all things Indian. The legacy of these misdeeds haunts us.” Gover then proceeded to make a formal apology to Native Americans on behalf of the bureau: “Let us begin by expressing our profound sorrow for that the agency has done in the past” (Stout 2000: 5A).

Clearly, under some circumstances, the U.S. government has recognized the right to reparations or other compensation for racial and ethnic oppression--but not, as yet, for black or Latino Americans. Thus, Puerto Rican and Mexican Americans have pressed for some reparations for racial oppression, albeit so far unsuccessfully. In the 1960s a new organization, the Alianza Federal de Mercedes, was founded by a Mexican American activist, Reies Lopez Tijerina. Researching old Mexican land grants in the Southwest, he found that land had long ago been stolen from Mexican families by new white immigrants coming into the area. A group of Alianza members marched on the state capital Santa Fe and presented a statement of grievances about that theft of land; another group camped out without a permit on Kit Carson National Forest land, once part of a Mexican communal land grant. U.S. forest rangers were seized and tried for violating old land-grant boundaries (see Feagin and Feagin 1999: 318-19). More recently, some Mexican Americans in the southwestern states have filed lawsuits seeking return of stolen lands or compensation for those lands. In addition, Puerto Ricans have pressed for compensation for oppression. The Puerto Rican Independence Party has called for dollar compensation from the U.S. government in a transitional period to independence. In recent decades, residents of the island of Vieques near Puerto Rico have seen their island become the target for massive bombing by the U.S. Navy; they have asked for reparations for decades of damage to the physical environment and to the health of the island's citizens.<sup>9</sup>

## **INTERNATIONAL PRECEDENTS: REPARATIONS FOR SOUTH AFRICANS**

The principle of reparations for major human rights violations is well established in international law. The International Court in the Hague, among other international tribunals, has now awarded reparations a number of times (Robinson 2000: 221). Moreover, recent government actions in South Africa have included payment of reparations to the victims and survivors of human rights violations. These reparations have been recommended by the South African Truth and Reconciliation Commission (TRC), an organization that offers one important model for those setting up programs to deal with past racial oppression. Not only does the Commission have the power to grant amnesty after a full hearing on human rights violations, but it has also set in motion programs for the payment of reparations to those who suffered the violations. Interim payments to victims of rights violations were started in 1998, and the movement to permanent reparations was set in motion. The TRC recommended to the government that the victims and survivors of human rights violations should receive reparation payments totalling \$430 million and paid over several years. It also recommended reparations in the form of community programs for housing, health care, and education--programs at rehabilitating communities hurt by the large-scale human rights violations.<sup>10</sup> Today, the payment of adequate reparations is part of a continuing political struggle in South Africa. The moral and institutional precedent for reparations for racial oppression is now well established at an international level.

## THE STRUGGLE FOR BLACK REPARATIONS

Beginning in the 18th century African American leaders and their white allies argued for the abolition of slavery and for restitution enabling those freed to provide for their families. After the Civil War, reparations were increasingly seen as essential to the eradication of the “badges and disabilities” of previous enslavement. Several black and white leaders called for compensation for those newly freed from slavery. For example, at a Republican convention in Pennsylvania, Thaddeus Stevens called for the taking of 400 million acres from former slaveholders to provide some compensation and assets to those once enslaved. And Senator Charles Sumner called for land grants to those recently enslaved because legal equality did not eradicate the disparities in assets and power (Magee 1993). However, with the terroristic suppression of Reconstruction and the capitulation of the U.S. government to this white terrorism and subsequent legal segregation, the efforts for compensation and reparations virtually came to an end. It would be nearly a century before strong proposals for reparations would return to the public forum.

Many decades later, during the 1960s, Dr. Martin Luther King, Jr., called for significant compensation for slavery, segregation, and continuing antiblack discrimination. He stated the principle of compensation for stolen wages (King 1963). Other black activists also pressed the issue. In 1969 James Forman made his appeal for reparations by interrupting a service at New York's Riverside Church. He addressed a Black Manifesto to the “white Christian Churches and Jewish Synagogues in the United States of America and All Other Racist Institutions.” It called for a beginning of reparations and detailed economic demands such as the creation of banks, universities, and training centers for African Americans (Feagin and O'Brien 1999). The white reaction was mostly negative and focused mainly on the disruption of the church service. There was little analysis of the key idea of reparations. One authoritative mouthpiece of the white elite, the New York Times, made a commonplace misjudgment. Its September 9, 1969 editorial noted that “there is neither wealth nor wisdom enough in the world to compensate for all the wrongs in history” (quoted in Bittker 1989: 87-88). However, this is disingenuous and clearly the wrong question, as Boris Bittker noted at the time: “A better response is the counter-question. Should no wrongs be corrected unless all can be? In both public and private life, we constantly compare competing demands for the redress of injustice, knowing full well that the pit is bottomless . . . .” (Bittker 1989: 102). The point the Times ignored was, “Who decides which important wrongs are to be redressed, and when?”

Shortly thereafter, at a 1972 National Black Political Convention meeting in Indiana, a call was issued for reparations for the Amoral horrors of slavery” and the “human indignities” of discrimination suffered since. It spelled out a procedure for starting reparations: Asking the U.S. President to set up a commission with a black majority to “determine a procedure for calculating an appropriate reparations payment in terms of land, capital and cash and for exploring the ways in which the Black community prefers to have this payment implemented” (quoted in Bittker 1989: 108). For decades now, African Americans have articulated the idea of restitution and reparations.

A Recent Call for Reparations: The Organization of African Unity Recently, major international efforts have been directed at reparations for Africans both in Africa and in the diaspora around

the globe. In 1992 the Organization of African Unity convened the first pan-African conference on reparations for African casualties of European colonialism. Representatives from thirty countries drafted a statement that called on “the international community to recognize that there is a unique and unprecedented moral debt owed to African peoples which has yet to be paid--the debt of compensation to the Africans as the most humiliated and exploited people of the last four centuries of modern history” (quoted in Robinson 2000: 220).

In March 1996 the British House of Lords had a serious debate on the impact of slavery on Africa and Africans, with a few members of that House proposing reparations to Africa from Britain and other colonial nations. Lord Anthony Gifford eloquently defended the idea that international law has for some time required those who commit crimes against humanity, including enslavement, to make significant reparations to their victims or their descendants. He noted there is no statute of limitations for crimes against humanity, so the still-harmed descendants of earlier victims of oppression deserve reparations. He also offered a concrete procedure: “The claim would be brought on behalf of all Africans, in Africa and in the Diaspora, who suffer the consequences of the crime, through the agency of an appropriate representative body. . . . The claim would be brought against the governments of those countries which promoted and were enriched by the African slave trade and the institution of slavery. . . . The amount of the claim would be assessed by experts in each aspect of life and in each region, affected by the institution of slavery” (Gifford 1993). It is interesting that the House of Lords has been more advanced in examining these matters than the U.S. Congress.

A House Bill for a Reparations Study Commission Every year since 1989 Representative John Conyers Jr. (D-Michigan) has introduced a bill in Congress to set up a commission to “acknowledge the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the United States and the 13 American colonies between 1619 and 1865 and to establish a commission to examine the institution of slavery, subsequent *de jure* and *de facto* racial and economic discrimination against African Americans, and the impact of these forces on living African Americans, to make recommendations to the Congress on appropriate remedies, and for other purposes” (quoted in Robinson 2000: 201). A key feature of the commission would be to educate the public, especially the white public, on the racist realities of U.S. history. While Conyers has been unable yet to secure hearings on his bill, he has gotten more than two dozen congressional co-sponsors and has been working patiently for public discussion of reparations. As he has recently commented, some day the “most hidden, important, silent subject we've ever had in this country” will come to the forefront. He added, “What we're trying to do now is just get the debate going to see where it will lead us” (Merida 1999: C1). As of early 2001, the bill has not made its way out of the Republican-controlled Committee on the Judiciary.

By the mid-1990s the idea of reparations for African Americans had moved into the political and religious mainstream. Since the 1990s several state and city governments have passed resolutions supportive of Conyers bill and/or the forming of a national commission to investigate the issue of substantial reparations for African Americans. On May 19, 2000, the Atlanta city council passed a resolution supporting a national commission to study slavery's longterm impact and the payment of reparations. Thereby, they joined the city governments of Dallas, Cleveland, Detroit, and Washington, D. C., in such a view.

## ATTEMPTS TO GET BLACK REPARATIONS: STRATEGIES AND TACTICS

The data presented above provide the justification for making reparations in the form of dramatic new asset-building programs for African Americans, both individually and collectively. The payment of reparations would compensate the black community for the unpaid labor of their forebears and provide contemporary African Americans with their fair share of the national wealth that they would have had if given the same advantages white Americans had secured over nearly four hundred years (Browne 1993).

In recent years some African Americans have sought to go beyond the idea of a commission to study reparations and attempted to secure monetary compensation. Their attempts provide some insight into how the expropriation of African American labor and wealth over nearly four centuries might be compensated, as well as into the difficulties of such an undertaking.

An Attempt at Reparations through the Courts In a 1995 case several black plaintiffs tried to sue the U.S. government and collect damages of \$100 million “for forced, ancestral indoctrination into a foreign society; kidnaping of ancestors from Africa; forced labor; breakup of families; removal of traditional values; deprivations of freedom; and imposition of oppression, intimidation, miseducation and lack of information about various aspects of their indigenous character” (Cato 1995:1105). The litigants asked the court to order an apology for slavery and for discrimination against freed slaves and their descendants. Not unexpectedly, the U.S. district and appellate courts found that these black claims were barred by the “sovereign immunity” principle--the principle that the U.S. government generally has to agree to its being sued. Thus, while recognizing that the Federal Tort Claims Act (FTCA) has allowed limited civil claims against the U.S. government, as of January 1945, the appellate court argued that the statute of limitations barred the black plaintiffs' suit. Apparently with a straight face, the appellate court justices argued that “By its own terms, therefore, claims arising out of the fact of slavery, kidnaping, and other offenses to Cato's [the lead black plaintiff] ancestors that occurred prior to 1945 or were not pursued within two years of their accrual, fall outside the FTCA's limited waiver of sovereign immunity” (Cato 1995: 1107). However, this argument is problematical if one considers the larger context of international law (something U.S. courts rarely do), for crimes against humanity have no statute of limitations there.

The appellate court also noted that the lawsuit “draws on the legislative history of the Thirteenth Amendment and the Civil Rights Act of 1866 to contend that the federal government had an obligation to end the vestiges of slavery, but has failed to keep the promise.” Yet the court rejected this argument with characteristic individualism: “Without a concrete, personal injury that is not abstract and that is fairly traceable to the government conduct that she challenges as unconstitutional, Cato lacks standing” (Cato 1995: 1109-10. Italics added). The court further asserted that “Neither does Cato have standing to litigate claims based on the stigmatizing injury to all African Americans caused by racial discrimination” (Cato 1995: 1109-10). It appears that black Americans will not be able to secure reparations through the U.S. courts until Congress acknowledges the U.S. government's longterm responsibility for racial oppression.

State Legislative Action: One Important Precedent In the 1920s Rosewood, Florida was a relatively prosperous black town of about 350 people. On January 1, 1923, the town was attacked



by whites and at least 8 black residents were massacred, with dozens more being injured, and the town was burned. This massacre took place with the collusion of law enforcement officials. In the early 1990s a black survivor working to recover damages contacted a lawyer who pointed out the difficulties and suggested instead going to the legislature. After some powerful legislators got involved, and momentum developed, the Florida legislature passed the Rosewood Compensation Act (1994). This seems to be the first time that any level of government in the United States has openly acknowledged a role in racist violence against African Americans and then provided significant compensation to victims. The state of Florida acknowledged the role of its officials in not preventing the massacre. Each involved black family was eligible for \$20,000 in compensation, plus up to \$150,000 for documented losses; those present at the time were eligible for an additional payment up to \$150,000. Yet even here no public apology was made by the legislature (Nunn 1999). Perhaps the biggest lesson out of this case is that reparations for African Americans are not a radical idea, but one that can gain support even from conservative legislators.

Significantly, the Rosewood legislation is a precedent that has influenced current efforts for reparations in Tulsa, Oklahoma, where 175 or more African Americans were killed in a massive massacre (usually called the Tulsa “race riot”). In late May and early June of 1921 a white mob came together at the Tulsa court house to lynch a black man. When black veterans of World War I organized to resist the lynching, the police department deputized several hundred white men to put down what was termed a “negro uprising.” Armed white men, including the deputies, went into the black community and burned many homes and stores, killing and injuring black Tulsans as they went. Since 2000 government officials in Tulsa and the state legislature have debated reparations for Tulsa's black community--including compensation for the sixty survivors of the massacre (Brophy 2000).

In both the Rosewood and Tulsa cases, clear documentation of the government-sanctioned atrocities committed under legal segregation has helped to make the case for reparations. There are doubtless more such cases that could be documented for the period of legal segregation--in both southern and northern states. Such careful documentation, together with pressure on state and federal legislatures for redress, might be a way to help create a larger national movement for reparations. Today, government action for reparations for African Americans is not beyond the realm of possibility.

## **PRACTICAL QUESTIONS IN IMPLEMENTATION OF REPARATIONS**

What are the steps that might be taken to provide reparations? How might this be done? One step in moving toward such reparations might be in the area of education. Many, if not most, whites are inclined to deny the reality of widespread antiblack discrimination, and also are inclined to romanticize past efforts at change--such as by asserting that most racial discrimination has been eliminated by civil rights laws. The knowledge that most white Americans have about past and recent racial history is so limited that, without major educational efforts, it will be difficult to get them to understand some of the key arguments made by advocates of reparations.

Another early step might be pressing aggressively for a national apology to African Americans--which might also have some modest educational value. It was not until the late

1990s that any U.S. president entertained the idea of a public apology for the government role in enslavement. Then President Bill Clinton stated that apologies for slavery could be important in national racial healing, but after white protests he retreated from making an apology. Clinton also asserted the common argument that “the nation is so many generations removed from that era that reparations for black Americans may not be possible” (quoted in Smith 1999: 370). Moreover, in 1997 House member Tony Hall (D-Ohio) proposed a bill to Congress (cosponsored by 16 other House members) demanding a national apology for slavery. Making an apology may be a good place to start, but it is only a start. A much more substantial congressional step would be to begin to provide monetary and nonmonetary reparations for centuries of oppression.

Let us now consider some more specific and practical of questions about the implementation of reparations to African Americans.

How Might Reparations to African Americans Be Paid? The previously cited precedents suggest that both individual and collective compensation can be considered. For Japanese Americans, there were payments to individual claimants or their heirs. Individuals and families were compensated for the harm done. In contrast, German reparations to Jews went both to surviving individuals and to the Jewish state of Israel, which became the collective representative of the victims of the Holocaust.

Some advocates of reparations for African Americans press for individual compensation, while others have proposed collective compensation. There are at least two approaches to individual reparations. Government reparations funds could be paid out directly on a one-time per capita basis to African Americans, or, alternatively, they could be put into income-earning investments, whose returns could be paid out each year on a per capita basis (Browne 1990: 205). Darrell Pugh has suggested a different approach: The organization chosen to represent African Americans could invest the reparations for the entire community, and black individuals could then apply to this coordinating organization “for funds that would be used to foster the goals that ‘self-help’ sought to achieve--namely, economic independence and self-sufficiency” (Pugh 1999: 373). Some analysts have pointed out a number of difficulties with per capita reparations for African Americans, including the wide differences in monetary and nonmonetary damages suffered by individuals. However, as I will discuss below, justice, not individual need, has been the central issue in most cases of compensation for oppression.

Probably for both practical and political reasons, the emphasis among most current black and white advocates of reparations is placed on collective policies and group programs. Thus, the 1969 Black Manifesto called for \$500 million in reparations by white religious and other organizations for such institutional investments as job training centers in black communities, a welfare recipients organization, a land bank in the South, and a black university. More recently, the National Coalition of Blacks for Reparations in America (N'COBRA) has sought nearly \$400 million in reparations-- both for individual compensation and for the provision of programs for institutional asset-building in black communities. According to one N'Cobra plaintiff, "We're seeking reparations for our ancestors who aren't here to bear witness. . . . Nobody was paid 40 acres and a mule because Lincoln was assassinated before it could go through" (Magagnini 1994: A1).

Moreover, the community focus of reparations under South Africa's Truth and Reconciliation Commission is perhaps a model for reparations for African Americans. A leading legal scholar on reparations, Robert Westley, has argued that because African Americans “have been and are harmed as a group . . . I am opposed to individual reparations as a primary policy objective.” He accents the way that group reparations could help with critical institution-building and asset-building in black communities (Westley 1998: 469). Similarly, in his pioneering 1973 book Bittker suggested that reparations should involve collective compensation directed at institution building. He expressed concern that individual payments would go mostly for current consumption, and not for the necessary longer term investments in black communities (Bittker 1973: 71-73). However, one should note in this regard that white Americans have been allowed to do as they please with their accumulated wealth.

Most advocates of collectively focused reparations desire governments in the United States to fund directly large-scale job training, educational, and housing programs designed to improve socioeconomic conditions in black communities. Reparations in the form of community rehabilitation--such as for first-rate public schools and housing, and for seed capital to build small businesses--seem critical to the full rebuilding of black America. Yet others suggest the transfer of an appropriate amount of compensating assets to a huge investment fund that would be used to create many new job-creating enterprises--thus providing a real economic “takeoff” for black communities (Browne 1990: 205). The rationale of the group approach is that racial oppression was, and is, a collective effort by whites and has affected the entire black community--even “free” blacks during slavery and middle class blacks today. For that reason, the solution must also be one of restoring communities, not just individuals, to wholeness (see Brooks 1990).<sup>11</sup>

What Amount of Compensation Would Be Paid? Some have suggested taking the average earnings gap between black and white workers and multiplying that by the number of black workers to suggest an annual compensation figure (Pugh 1999: 372-73). Using Census data, I calculated that the current (1998) annual earnings gap between full-time, year-round white and black workers is \$9724 for men and \$3440 for women.<sup>12</sup> When these figures are multiplied by the total number of full-time, year-round black workers, the total monetary differential is today about \$71.1 billion annually. An alternative calculation would be to capitalize the wages gap. If the average market rate of return is 10 percent, then the total capitalization required would thus be about \$711 billion, to generate \$71 billion annually. We should note two things. First, this figure does not take into account the costs for part-time or unemployed workers. Adding them in would increase this figure substantially. Secondly, these calculations do not take into account the large gender gap in U.S. workers' incomes, which is indeed about \$9,500. If that gap is included in the final calculation, a much larger amount would be necessary to bring women workers, including black women workers, up to the level of white men.

In addition, closing the current income gap would only be part of an asset-building strategy. There would also need to a much larger effort to close the wealth gap, which is much larger than the income gap because of fifteen generations of white head-starts and advantage in income and other assets. This huge wealth gap could only be closed by major efforts to provide African Americans with land, homes, securities, and other equity and income-generating assets.

By any reasonable calculation of the unjust impoverishment, the reparations required just to close the income and wealth gaps are huge. Some analysts have suggested that, to make provision of large reparations more politically acceptable to white Americans, they would have to be paid out over some period of time--though, from the black perspective, such a period could not be so long as to continue the harsh reality of "a dream deferred."

Who Would Represent African Americans Collectively? Several scholars have suggested that a widely accepted black-led organization would need to be chosen to represent African Americans in the process of developing and distributing reparations, a step with a number of practical difficulties such as choosing which organizations to include (see Bittker 1989: 109).<sup>13</sup> Still, major African American organizations, especially civil rights organizations, would likely be involved. Potential black beneficiaries could elect their group representatives. A private trust organization might be set up, which would be administered by elected trustees and financed by U.S. government funds, perhaps for a specifically limited period. The trust funds would then be distributed to projects for the educational, economic, and political empowerment of African Americans (Westley 1998: 470). Pugh (1999: 373) suggests that a national trust fund administered by representatives of African Americans might be structured similar to the government's Small Business Administration, with a board of governors responsible to Congress.

Who Should be Paid? Some whites may object that not all African Americans deserve reparations, for some, such as those in the upper middle class, are doing well, at least from a white perspective. Indeed, this point has often been made in numerous white complaints about current affirmative action programs. Yet this argument misses the essential point that reparations are due because of just entitlement and not because of economic need. Thus, Japanese Americans and European Jews got reparations because of the damage done to them, not because of economic need. The traditional idea of unjust enrichment does not focus on need but rather on restoring to those who have suffered loss their rightful assets and position in society (see Westley 1998). The costs of racism have hit African Americans as individuals and families--as well as harmed their communities. If the unjustly lost wealth is to be restored, it will have to be returned, to a substantial degree, to those individuals and families. Moreover, white complaints about black middle class' success are often exaggerated and made from ignorance or with a lack of candor. Field research shows that middle-class African Americans still pay a very heavy price, both in material terms and health-wise, for the continuing discrimination they face (see Feagin and Sikes 1994).

Clearly, we should note the problem of identifying beneficiaries. Such identification would raise the question of "who is black?" in a potentially divisive form. There would be much opposition to setting up a bureaucracy using official criteria in deciding who is black. (Indeed, white opponents of reparations might claim to be black.) Some analysts have noted that this is a major argument against individual reparations. Yet, group reparations may face some of the same problems, though the collective approach would allow groups already seen as legitimate and black-managed, such as civil rights organizations and community and religious groups, to supervise programs of group reparations (see Bittker 1989: 121-23). This would focus reparations implementation within existing black communities and reduce the likelihood that non-blacks would clamor for participation. Still, there would be hard choices to be made, and much debate would likely follow any beginning on a government-funded program of reparations.

Who is Responsible for Payments? Most whites would likely say that they should not be held accountable, perhaps adding phrases like “My family never owned any slaves.” Recently, Representative Henry Hyde (R-Illinois), chair of the House Judiciary Committee, commented that the idea of collective responsibility for slavery “is an idea whose time has gone. I never owned a slave. I never oppressed anybody. I don't know that I should have to pay for someone who did generations before I was born” (quoted in Merida 1999: C1).

Nonetheless, as I have shown above, the majority of white individuals and families have benefitted, in varying ways, from the enslavement and segregation of African Americans, as well as from continuing patterns of discrimination. Certainly, the U.S. government was directly involved in buttressing and perpetuating slavery, such as by putting fugitive slave laws into operation (including in the U.S. Constitution). Enslaved African Americans built much of the Capitol itself, as well as other government buildings. Indeed, enslaved African Americans put up the statue to freedom on top of the Capitol. Later on, local, state, and federal government agencies were implicated directly in buttressing or winking at legal segregation across various institutional areas. The federal government has been involved as well in the lack of effective enforcement of civil rights laws since the 1960s. For such reasons, federal, state, and local governments should be seen as responsible for making reparations to African Americans as individuals, families, and communities.

Aggressive government involvement seems essential to building up institutions that provide both monetary and cultural assets. Restitution might take the form of extensive well-funded and programs for upgrading the education and job skills of all black Americans who seek such aid. These could be established in every black community. Related programs could provide government resources for business starts and mortgages and to significantly upgrade the quality of public schools and other public facilities in all black communities. A key feature of these programs would be their substantiality. One can begin on the modest scale, but if reparations are to destroy unjust impoverishment and enrichment in the long term, they would have to be large-scale programs, and far more substantial than anything tried by governments in seeking social justice goals in the past, such as the modest 1960s' War on Poverty programs. Over time, the scale of reparations funding would need to be very large, ultimately in the trillions, and at least as large a commitment as the federal government commitment to national defense. Moreover, the funding would need to last for a long time. Racial oppression has gone on for fifteen generations, so there it is likely that the provision of meaningful reparations will also take several generations.

Nonmonetary Reparations Reparations would need to be nonmonetary as well. One type of nonmonetary reparations would be to guarantee voting rights and representative participation for African Americans in all local, state, and national legislatures, so that they could have an appropriate voice in government decisions affecting the nation and their communities.

So far I have only considered compensatory damages for the harm done to African Americans, usually in reference to calculations of economic loss. In legal cases involving individuals the compensatory damages paid by the perpetrator of harm are often accompanied by punitive damages, whose purpose is to punish or deter a perpetrator who has acted willfully, maliciously, and in bad faith. Clearly, many white actions in the arena of racism have been willful, malicious,

and in bad faith, whether taken under slavery, legal segregation, or modern racism. Given the persisting and costly brutality of U.S. racism, African Americans would not perhaps be out of line in asking for substantial punitive damages as well. Yet, in our legal system the U.S. government can only be sued under certain limited circumstances, and never for punitive damages. Nonetheless, crimes against humanity have a different character from ordinary individual wrongs according to some interpretations of international law. At a minimum, if African Americans forgo punitive damages, this should add a moral incentive for white Americans to undertake a program of actual compensatory reparations.

## CONCLUSION

Given the long history of economic theft from African Americans by white Americans, and the trillions of dollars in costs, the idea of reparations need not be seen as “radical” but rather as necessarily flowing from an expanded--collective--legal doctrine of redressing conditions of unjust impoverishment and enrichment. In my view reparations constitute a much better government option than affirmative action, because reparations can more easily be seen as compensation for damages suffered, and not as a handout. Of course, whites must be made to see this connection between compensation and damages--which is essential if a program of reparations is to become public policy. Once again, aggressive education of the white public about the truths of U.S. racial history is very important.

One important benefit of reparations is the psychological and symbolic impact. The provision of reparations would have significance beyond the tangible compensation, for it would constitute a symbolic recognition of centuries of systemic racism. At a 1993 Pan-African Conference on Reparations in Nigeria, Dr. Chinweizu (1993) argued that “More important than any monies to be received; more fundamental than any lands to be recovered, is the opportunity the reparations campaign offers us for the rehabilitation of Black people, by Black people, for Black people; opportunities for the rehabilitation of our minds, our material condition, our collective reputation, our cultures, our memories, our self-respect, our religions, our political traditions and our family institutions; but first and foremost for the rehabilitation of our minds. . . . the most important part of reparation is our self-repair.”

Here we also see that the issue of reparations for African Americans, as well as for others enslaved in the African diaspora, is now an international question. Recently, some black leaders from the United States and other parts of the Americas have pressed the United Nations Working Group on Minorities to consider the impact of slavery on African Americans and other African-origin peoples of the Americas. One point they are making is that the long term, unredressed disabilities stemming from slavery still constitute a violation of the International Covenant on Civil and Political Rights.

How will real change come? Clearly, getting white Americans to make reparations in the trillions of dollars for four hundred years of racial oppression will be very difficult. Perhaps the best that we can hope for is a good start in the form of community reparations through federal government programs. Moreover, if history is our guide, it is likely that the impetus for change will have to come from African Americans, yet one more time. As legal scholar, Rhonda Magee (1993: 916), has put it, “The master's house may be dismantled . . . by use of the master's tools. But it is folly

to expect that the master himself will use his tools against his property in so self-destructive a way. The job of doing that, rests, as it has always in the past, with those forced to shoulder the increasingly unbearable weight of the well-appointed structure that the master built: those at the bottom.” While there are many whites who support such anti-racism efforts, it will probably have to be African Americans who trigger, and press for, such changes.

What does the society as a whole have to gain from a large-scale program of reparations? Robert Browne (1990: 205) has argued that reparations in the form of internal capital transfers would “involve no loss of resources to the economy, but rather a redistribution away from heretofore favored classes.”<sup>14</sup> There might even be a boost to the economy from such transfers. In addition, there will likely be a society-wide energy gain as black Americans get out from under the shroud of racism and gain much new energy for seeking broader group and societal goals. At the same time white Americans could abandon their obsession with black Americans and put much new energy into broader societal goals. Clearly, there is a major moral gain here for the United States, since for the first time in its history there will be a real national commitment to implementing the goals of liberty and justice for all. In the long run, such reparations may also save society from upheaval. Just societies are likely to work better and last longer than those with great social inequalities. Societies sustainable in the long run may well require ever-expanding social justice.

## ENDNOTES

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