

# Restorative Justice, Slavery, and the American<sup>1</sup> Soul

A Policy-Oriented<sup>2</sup> Intercultural Human Rights Approach to the Question of Reparations

By Michael F. Blevins, J.D., M. Div., L.L.M.-IHR (2005)<sup>3</sup>

St. Thomas University School of Law

©May 9, 2005

*Power never concedes anything without a demand.*

*It never has and never will.*

—Frederick Douglass (1817-1895)

*The moral arc of the universe is long, but it bends toward justice.*

—Theodore Parker (1810-1860)

## Introduction.

“Restorative Justice” describes a growing contemporary movement whose aim is to move systems of justice toward facilitation of truth-telling, reconciliation, restoration and healing.<sup>4</sup> This paper will examine the application of international law and restorative justice concepts to the legacy of what historians and legal scholars agree is the most severe and longest-lasting violation of human rights in the history of the United States: African-American slavery (1619-1865) and its oppressive aftermath through Reconstruction, Jim Crow, the Civil Rights Movement, and a continuing “racial”<sup>5</sup> divide.

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<sup>1</sup> “America”, though referring to Central and South America as well as North America, will, for the purposes of this study, refer only to the United States of America.

<sup>2</sup> This study’s policy-oriented legal analysis follows the philosophy and format of the New Haven School of Jurisprudence pioneered by the late Professor Myres Scott McDougal, Yale University School of Law, and developed most recently in W. Michael Resiman, M. Arsanjani, S. Wiessner, and G. Westerman, *INTERNATIONAL LAW IN CONTEMPORARY PERSPECTIVE* (2004), see especially pages 16-33.

<sup>3</sup> Bachelor of Science Degree in American History, 1997, Kansas State University; Juris Doctor Degree, 1980, Washburn University of Topeka; Master of Divinity Degree, 1991, North Park Theological Seminary; Candidate, Master of Laws in Inter-Cultural Human Rights, St. Thomas University, Miami, Florida. This Thesis in Inter-Cultural Human Rights is dedicated to my memory of and the futures of the special group of preschoolers, and their children, that my former wife, Katie Hartzell Blevins, taught in Manhattan, Kansas in the 1976-1977 school year. I also wish to extend special thanks to my advisor, Msgr. Andrew L. Anderson, Professor Siegfried Wiessner, and Roza Pati, Directors of the L.L.M.-IHR program at St. Thomas University, Miami, Florida, Dr. Robert L. Linder, my history advisor at Kansas State University, Cheryl Brown of the Brown Foundation in Topeka, Kansas, and I will always have special love and gratitude for Lucinda Todd, my incredible African-American fifth grade teacher.

<sup>4</sup> See, generally, Dr. Johnstone Jerry, *RESTORATIVE JUSTICE: IDEAS, PRACTICES, DEBATES*, (Devon, United Kingdom: Willan Publishers, 2001); and Heather Strang and John Braithwaite, eds., *RESTORATIVE JUSTICE AND CIVIL SOCIETY*, (New York: Cambridge University Press, 2001).

We will specifically address this question: is it a strategic time to move forward with renewed commitment to ascertain more fully the truth about the realities and effects of slavery in the United States? If so, what might be some of the processes to accomplish that and to fashion effective restorative justice responses?

#### **D) Delimitation of the Problem and Clarification of Goals.**

There has been a recent significant upsurge in attention by communities and States to specific incidents and episodes of grave violations of human rights, especially in the Jim Crow era.<sup>6</sup> This study will attempt to explore whether as a society we might be approaching a historical “tipping point”<sup>7</sup> that will change the will of the American people and its leaders to comprehensively deal with the legacy of slavery in our culture.

There has been in foundation built for such a process.<sup>8</sup> To date, however, most scholars, legal practitioners, and political leaders not involved in the movement have viewed the reparations movement as being, so to speak, dead in the water, a “non-

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<sup>5</sup> I agree with Critical Race Theorists that “race” is a social and cultural construct, and I will refer to race not because of any biological reality, but because of sociological perceptions that create their own reality. For a helpful discussion of this issue, see Cornel West, Chap. 16, “Race and Social Theory”, in *KEEPING FAITH: PHILOSOPHY AND RACE IN AMERICA*. (New York: Routledge, 1993), pp. 251-270. For additional background, see, Francisco Valdes, et. al. “Battles Waged, Won, and Lost: Critical Race Theory at the Turn of the Millenium”, in Francisco Valdes et al. eds., *CROSSROADS, DIRECTION, AND NEW CRITICAL RACE THEORY* 1, 1-3 (2002); and Kendall Thomas, “Racial Justice: Moral or Political?”, 17 *NAT’L BLACK L.J.* 222 (2003-2004).

<sup>6</sup> For examples of increasing recent reports see, “Fresh Outrage in Waco at Grisly Lynching of 1916”, *New York Times*, May 1, 2005, p. 18 (a Waco pastor is quoted as saying “Before we can claim our future, we have to confront our past”); *New York Times* editorial, “An Update on Corporate Slavery”, Jan. 31, 2005;

<sup>7</sup> Malcom Gladwell, *THE TIPPING POINT: HOW LITTLE THINGS MAKE A BIG DIFFERENCE*, (Boston: Little, Brown & Co, 2000) (chronicling many historic cultural changes that seemed distant and unlikely—if even foreseen—until a convergence of seemingly unrelated developments synergistically achieve a momentous and surprising “tipping point”).

<sup>8</sup> For an excellent and authoritative scholarly overview, see, Charles Ogletree, “The Current Reparations Debate”, 36 *U.C. DAVIS L. REV.* 1051 (2004). See also, Naomi Roht-Arriaza, “Reparations Decisions and Dilemmas”, 27 *HASTINGS INT’L & COMP. L. REV.* 157 (Winter, 2004); and Jeffrey Ghanman, “Repairing the Past: Demands are Growing for Reparations for the Descendants of African Slaves in America; How the Issue is Resolved May be Key to this Country’s Continuing Search for Racial Harmony”, 86 *A.B.A.J.* 38 (2000).

starter.”<sup>9</sup> But my hypothesis is that this reality, if true, is beginning to change, and that there are compelling facts and forces developing that may very well give a concerted drive for restorative justice on this human rights issue a chance of success that could transform our country for the better.

The objections raised to slavery reparations are many but have a common thread: Why now? Why us?<sup>10</sup> Alfred L. Brophy has written recently about the “cultural war” over slavery reparations<sup>11</sup>; he cites polls that indicate approximately 70% of blacks and 5% of whites in Alabama support reparations<sup>12</sup>. The divide is less severe nationally, but still it is significant<sup>13</sup>, bearing witness to the very legacy we are discussing. It is my sense that a closer look at human rights law is needed to provide the political will and the legal framework for realistically resolving the concerns of the unconvinced and to heal the soul of a conflicted nation.

## **II) Identification of Conflicting Claims.**

### **A) The Legacy of African –American Slavery.**

#### **1) The historical record.**

*You hear these white people talk about they've pulled themselves up by their own bootstraps. Well they took our boots, no less our straps, and then after they made us a citizen, honey, what did they turn around and do? They passed black codes in order*

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<sup>9</sup>See, e.g., Lee A. Harris, “Reparations as a Dirty Word: The Norm Against Slavery Reparations”, in 33 U. MEM. L. REV. 409 (2003).

<sup>10</sup> See, for example, the description of objections to reparations discussed in Kim Forde-Mazrui, “Taking Conservatives Seriously: A Moral Justification for Affirmative Action and Reparations”, 92 CAL. L. REV. 683 (2004), pp. 710-743.

<sup>11</sup> Alfred L. Brophy, “The Cultural War Over Reparations For Slavery”, in 53 DEPAUL L. REV. 1181 (Spring 2004).

<sup>12</sup> *Id.* p. 2-3, citing Sam Hodges, “Slavery Payments a Divisive Question”, Mobile Reg., June 23, 2002, at 1A.

<sup>13</sup> See, James Cox, summarizing a CNN/USA Today poll in “Activists Challenge Corporations That Say They Are Tied to Slavery”, USA Today, Feb. 21, 2002, at A1. Nationally, the CNN/USA 2002 poll indicated that 34% of whites support reparations by corporations, 10% of whites nationally supported reparations by the Government. For a discussion, see <http://manningmarble.net/works/oct.02a.html> (last visited May 4, 2005)

*to take from us all the benefits of citizenship.*

--“Queen Mother” Audley Moore, 1978<sup>14</sup>

The historical record of slavery in the United States is well established<sup>15</sup>. The facts of slavery are horrific and unique in overall scope in the annals of crimes against humanity. Enslaved African-Americans, as numerous accounts and studies document, were victims of such violations against human dignity and human rights as: kidnapping, theft, separation from family and home, aggravated assault, rape, sexual abuse, child abuse, degrading treatment, torture, murder, genocide, forced migration, forced deprivation of culture, forced labor, imprisonment, forced deprivation of wealth, lack of education and health care, inadequate housing, fraud, psychological trauma, severe emotional distress, deprivation of self-determination and self-government, denial of citizenship and denial of the right to participate in public life.

Henry Louis Gates of Harvard has conservatively placed the number of Africans kidnapped and sold into slavery at between 10 and 12 million.<sup>16</sup> W.E.B. Du Bois, in his 1920 book *Darkwater*, estimated the number of slaves could have been as high as 100 million.<sup>17</sup> In 1999, David Ellis and others published a study, available on CD-ROM, that contains the records of 27,233 trans-Atlantic slave voyages from 1595 to 1866, accounting for what the authors believe to be about 70% of the actual number, which

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<sup>14</sup> As quoted in Robin D. G. Kelley, *FREEDOM DREAMS: THE BLACK RADICAL IMAGINATION*, (Boston: Beacon Press, 2002), p.110.

<sup>15</sup> On the history of slavery generally, see: Gerald A. Foster, “American Slavery: The Complete Story”, 2 *Cardozo Pub. L. Pol’y & Ethics J.* 401, (Spring 2004); John Hope Franklin and Alfred A. Moss, “From Slavery to Freedom”, (New York: McGraw Hill, 1994); James Oliver Horton and Lois E. Horton, “Slavery and the Making of America”, (New York: Oxford University Press, 2004); and Milton Metzger, “Slavery: A World History”, (New York: De Capo Press, 1993).

<sup>16</sup> As quoted in Molefi Kete Asante, “African American Warrant for Reparations: The Crime of European Enslavement [and American Purchase] of Africans and Its Consequences”, in Winbush, *SHOULD AMERICA PAY?* at 8.

<sup>17</sup> W.E.B. Du Bois, *DARKWATER*, (Doer, UK: 1920), as quoted in Asante, *Ibid.*, at 8.

would make the total upwards toward 36,000<sup>18</sup>.

Jewel Crawford, Wade W. Nobles, and Joy DeGruy Leary have compiled a very moving, searing survey of the history of the ravages that slavery inflicted upon Africa and the Diaspora of slaves, most of who were purchased and enslaved in the United States<sup>19</sup>. Slavery in what was to become the United States began with Dutch traders bringing twenty kidnapped Africans to Jamestown, Virginia in 1619. The story begins this way:

The African kingdom of Ghana was famous for its opulent gold and salt trade. The Rise of Mali followed, controlling the gold trade routes, and included the famous cities of Timbuktu and Gao. Timbuktu was famous for its great mosques, royal palace, and most of all for its prestigious university...In the late 1400s arose the mighty empire of Songhai, followed by the kingdoms of Luba and Lunda in central Africa, important for their trade...The Kongo kingdom and the Great Zimbabwe exemplified other wealthy African civilizations that flourished before the invasion of the African coast, and its interior [<sup>20</sup>]...It is against this backdrop...that the Transatlantic Slave Trade began.<sup>21</sup>

As thousands, then millions, of Africans were kidnapped and enslaved, mortality rates soared in Africa, due to a number of reasons, mostly because of the introduction of new diseases.<sup>22</sup> Large regions of Africa were decimated; a cultural “rape” and genocide resulted. For captives, a 50% mortality rate ravaged their miserable ranks before they were stolen away<sup>23</sup>—forced on crowded ships for the horrific “Middle Passage”.

Crawford and her coauthors pick up the awful story from here:

There is little recorded in human history to compare with the sheer horror of the Middle Passage. Human beings were chained together, and then piled on top of one another, where they had to lie and sleep in their own waste...for weeks on end. A vicious cycle of disease ensued as African people huddled together crying, screaming, vomiting, and defecating uncontrollably...The

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<sup>18</sup> David Eltis, Stephen D. Behrendt, David Richardson, and Herbert S. Klein, *THE TRANS-ATLANTIC SLAVE TRADE: A DATABASE ON CD-ROM*, (New York: Cambridge University Press, 1999).

<sup>19</sup> Jewel Crawford, Wade W. Nobles, and Joy DeGruy Leary, “Reparations and Health Care for African Americans: Repairing the Damage From the Legacy of Slavery”, in Winbush, *SHOULD AMERICA PAY?* Ibid., at 253-258.

<sup>20</sup> Marvin Perry, Alan H. Scholl, Daniel F. Davis, Jeanette G. Harris, Theodore H. Von Laue, *HISTORY OF THE WORLD*, (Evanston: McDougal Littell Inc., 1995), p. 79, as cited in Crawford et al., p. 253.

<sup>21</sup> Crawford, et al., Ibid., at 253.

<sup>22</sup> Crawford, et al., Ibid. at 253-254.

<sup>23</sup> Perry, et al., Ibid. at 180-181.

captives suffered from dysentery, diarrhea, eye infections, malaria, malnutrition, scurvy, worms, yaws, and typhoid fever. Slaves also suffered from friction sores, ulcers, injuries and wounds...One can only imagine the state of mental health for those trapped in this living nightmare. Panic, anxiety, and hysteria prevailed. Pure rage alternated with a deep collective depression...African people were oftentimes thrown by the crew into the shark-infested waters...captives sometimes jumped overboard together, committing group suicide, and mothers threw their babies overboard. The three hundred years of the Transatlantic Slave Trade amounted to a massive *Maafa* (system of death and destruction beyond human comprehension...The Middle Passage destroyed the lives of anywhere in the range of 25 million to 75 million innocent human beings.<sup>24</sup>

Once the shackled, suffering survivors landed in America, there came a so-called grievous “breaking-in period” that could last up to three years. Exposure to the elements of a new climate, without adequate clothing, and exposure to new illnesses confronted the slaves immediately. Then came the auction block where they were marketed as beasts of burden and families were further separated and decimated. Crawford and her co-authors continue:

The auction block experience, where one was stripped naked and inspected like cattle, was only surpassed in cruelty and inhumanity by the overwork and beatings that were typical of plantation life...Practicing African religions was prohibited, and speaking in their mother tongue, their native African language was forbidden. The drum, a focal point of African life, was outlawed for communication. Depression, suicide, anxiety, rage, and psychosis, combined with tuberculosis, pneumonia, influenza, typhoid, yellow fever, and cold injuries combined to produce a 30 to 50 percent mortality during the breaking in period. Housing on the plantation in the slaves’ quarters generally consisted of poorly ventilated cabins with leaky roofs and dirt or clay floors...Accidental and fatal fires were common...overall nutrition was inadequate. Some survived on a diet of cornmeal and molasses...Black women were subject to every type of sexual abuse imaginable...High rates of maternal and infant mortality...very little time for breast-feeding...Once purchased...enslaved Black people could be used for any purpose [including experimentation].<sup>25</sup>

On January 16, 1865, four days after meeting with black ministers in Savannah, Georgia, General William T. Sherman issued Special Field Order No.15 which called for the setting aside of land along the Georgia and South Carolina coasts for newly liberated slaves, who had been fleeing plantations and following the General’s Army<sup>26</sup>. Each family was to receive 40 acres, and Sherman offered to loan the ex-slaves Army mules.

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<sup>24</sup> Crawford et al., *Ibid.*, at 254-255.

<sup>25</sup> *Id.*, at 255-256.

<sup>26</sup> This section is adapted from the overview prepared by The Afrocentric Experience, available at <http://www.swagga.com/reparation.htm> (last visited May 5, 2005).

Within six months, some 40,000 freed blacks had responded to the offer. Within months, a federal law establishing the Freedman’s Bureau was passed to supervise the transition and grants of land—but that summer newly elected Andrew Johnson canceled the plan and former confederates began to reclaim their property. Reparation bills were introduced in Congress in 1866 and 1867 but were not passed. A severely anti-Black Reconstruction period ensued and onerous “Black Laws” were passed in Southern states and elsewhere that kept Blacks on the plantations and farms as oppressed sharecroppers with no civil rights.

In the late nineteenth century, the effort to compensate ex-slaves was boosted momentarily when William R. Vaughn, a white Democrat from Alabama, launched a national movement to grant pensions to former slaves. Vaughn proposed that ex-slaves age seventy or older receive an initial lump sum of \$500 and then \$5 per month after that. There were different payment amounts for ex-slaves younger than fifty, from fifty to sixty, and from sixty to seventy.<sup>27</sup> None of Vaughn’s bill got past committee. Other groups joined the effort, notable among them the Ex-Slave Mutual Relief, Bounty & Pension Association, founded in 1897 by two African-Americans. No efforts at compensation were successful by any of the groups, and the Ex-Slave Mutual Relief, Bounty & Pension Association was out of business by 1917.<sup>28</sup> By the first half of the twentieth century “forty acres and a mule” became a symbol of broken promises.

Pulitzer Prize winning historian Leon F. Litwack recounts what awaited African-Americans next—“Jim Crow”.<sup>29</sup> “Jim Crow”—as a denigrating way of referring to

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<sup>27</sup> As described in Robin D. G. Kelley, *FREEDOM DREAMS: BLACK RADICAL IMAGINATION*, (Boston: Beacon Press, 2002) at 116-117.

<sup>28</sup> *Id.* at 18.

<sup>29</sup> This paragraph is adapted from Leon Litwack, *TROUBLE IN MIND: BLACK SOUTHERNERS IN*

African-Americans—had its beginnings in the minstrel shows of the early nineteenth century. Thomas “Daddy” Rice, a white man, popularized the term. He used burned cork to blacken his face, and then he dressed in rags, and grinned broadly and mindlessly. Then he would sing, dance in demeaning fashion, calling his character “Jump Jim Crow”. The caricature took off in white venues all over. By the 1890’s “Jim Crow” denoted the subordination and segregation of blacks—much of it enforced by law, the rest by power of public force. “A black person could not swim in the same pool, sit in the same public park, bowl, play pool or, in some states, play checkers, drink from the same water fountain or use the same bathroom, marry, be treated in the same hospital, use the same schoolbooks, play baseball with, ride in the same taxicab, sit in the same section of a bus or train, be admitted to any private or public institution, teach in the same school, read in the same library, attend the same theatre, or live in the same area as a white person.”<sup>30</sup> These years also saw the widespread and violent rise of the virulently racist Klu Klux Klan (KKK) and other hate groups, supported directly and indirectly by law enforcement, and unopposed by the white supremacist governmental and political structures of both North and South. Between 1882 and 1944 *at least* 3,417 African-Americans were horribly lynched.<sup>31</sup>

Discrimination was real and serious in the North. “The Great Migration” refers to the movement of first thousands, then millions of blacks fleeing the South after world

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THE AGE OF JIM CROW, (New York: Random House, 1999), p. , see also William H. Chafe, Raymond Gavins, and Robert Korstad, eds., REMEMBERING JIM CROW: AFRICAN AMERICANS TELL ABOUT LIFE IN THE SEGREGATED SOUTH,(New York, The New Press, 2001), C. Vann Woodward, THE STRANGE CAREER OF JIM CROW (1955), (New York: Oxford University Press, 2002); and Richard Wormser, THE RISE AND FALL OF JIM CROW, (New York: St. Martin’s Press, 2003).

<sup>30</sup> Richard Wormser, THE RISE AND FALL OF JIM CROW, ((New York: St. Martin;s, 2003), p.xi-xii.

<sup>31</sup> Philip Dray, AT THE HANDS OF PERSONS UNKNOWN: THE LYNCING OF BLACK AMERICA, (New York: Modern Library/Random House, 2003).

War II when social conditions worsened and jobs were particularly scarce, and factory jobs in the North were available. The resulting changes in the urban fabric in Northern cities revealed the pervasiveness of racism in the entire country. One example of the kind of daily abuse, fear, and oppression blacks in the North faced in housing, jobs, health care and other basic rights is told in the powerful true story based in Detroit of the suffering endured by Dr. Ossian Sweet and his family as they attempted to integrate a neighborhood, narrated by Kevin Boyle in the recently published book, *The Arc of Justice: A Saga of Race, Civil Rights, and Murder in the Jazz Age*<sup>32</sup>

One of the notable leaders of the Post-World War II movement for reparations was “Queen Mother” Audley Moore, who started out as a member of the Marcus Garvey Black Nationalism movement.<sup>33</sup> As recounted by Robin D. G. Kelley, Moore came to the issue of reparations in 1962 after reading a clause 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.”<sup>34</sup> She soon formed the Reparations Committee of Descendants of U.S. Slaves, Inc. and demanded federal reparations as partial compensation for slavery and Jim Crow. Her organization calculated that the sum of five hundred trillion dollars was owed, to be paid over a period of four generations, roughly eighty to one hundred years. They tried to present the demand to President John Kennedy, but “Moore got only as far as his secretary”.<sup>35</sup>

“Queen Mother” opposed the approach of the poverty programs begun in the 60s.

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<sup>32</sup> Kevin Boyle, *ARC OF JUSTICE: A SAGA OF RACE, CIVIL RIGHTS, AND MURDER IN THE JAZZ AGE*, (New York: Henry Holt & Co, 2004).

<sup>33</sup> As described in Robin D. G. Moore, *FREEDOM DREAMS*, at 118-119.

<sup>34</sup> *Id.* at 119.

<sup>35</sup> *Id.* at 119.

She believed that if the United States had made reparations rather than a War on Poverty, poor blacks would have been empowered rather than coming once again under the power of an elite—this time of the government and a handful of black elites: “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.”<sup>36</sup>

Beginning with the return of black soldiers from WWII, African-Americans began to become active and organized in new and energized ways to make a wide range of civil rights demands.<sup>37</sup> The NAACP which had been founded a generation before by W.E.B. Du Bois was a primary support for these efforts. Jackie Robinson, the first African-American major league baseball player stepped up to the plate with as much courage as skill.<sup>38</sup> Some of the developments over the next ten years were: The 1954 Supreme Court case of *Brown v. Board* sounded the death knell for Jim Crow segregation and led the way for history making developments to come—Rosa Parks, The Montgomery Bus Boycott, the rise of Dr. Martin Luther King Jr. to leadership, the sit-ins, the marches (especially Selma to Montgomery), the rallies (Birmingham, Alabama for instance), the Freedom Riders, Voter Registration drives, the Albany (Georgia) Movement, the March on Washington, and then, of course, the great Civil Rights legislation of 1964, granting

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<sup>36</sup> *Id.* at 119-120.

<sup>37</sup> For an excellent account of the Civil Rights movement of the 1950s and 1960s, see, e.g., Juan Williams, *EYES ON THE PRIZE: AMERICA’S CIVIL RIGHTS YEARS, 1954-1965* (New York: Penguin, 1988). See also, David Halberstam, *THE CHILDREN*, (New York: Ballantine Books, 1999); (John Lewis, *WALKING WITH THE WIND: A MEMOIR OF THE MOVEMENT*, (New York: Simon & Schuster, 1998; Josh GOTTHEIMER, ed., *RIPPLES OF HOPE: GREAT AMERICAN CIVIL RIGHTS SPEECHES*, (New York: Basic/Civitas Books, 2003); Lynne Olson: *FREEDOM’S DAUGHTERS: THE UNSUNG HEROINES OF THE CIVIL RIGHTS MOVEMENT FROM 1830 to 1970*, (New York: Scribner: 2002); David Rubel, *FANNIE LOU HAMER: FROM SHARCROPPING TO POLITICS* (Silver Burdett Pr., 1990); Fred Shuttlesworth: *A FIRE YOU CAN’T PUT OUT*, (Tuscaloosa: University of Alabama Press, 1999).

<sup>38</sup> See, Jackie Robinson, *I NEVER HAD IT MADE: AN AUTOBIOGRAPHY OF JACKIE ROBINSON*, (1972), (New York: G. P. Putnam & Sons, 1972).

long overdue basic human rights of voting, equal access to public accommodations, and protection from discrimination in education and employment.<sup>39</sup>

**In the 1960s** the Black Freedom Movement arose to prominence and in 1969 the “Black Manifesto” was issued and it included a demand for reparations—500 million dollars as seed money, a down payment so to speak—to be paid *by white Christian churches*. James Forman and other activists, especially the Black Economic Development Conference (BEDC), were behind the Manifesto, which was unsuccessful in moving whites to do justice, but was effective in raising national consciousness.

Forman explained the Manifesto years later:

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. . . Our demands. . . would not merely involve money but would be a call for revolutionary action. . .<sup>40</sup>

Imari Obadale, founder of National Coalition of of Blacks for Reparations in America (N’COBRA), drafted a plan for reparations that was presented to Congress in 1987 and was called “An Act to Stimulate Economic Growth in the United States and Compensate, in part, for the grievous Wrongs of Slavery and the Unjust Enrichment which Accrued to the United States Therefrom”. The plan called for not less than three billion dollars annually to be paid to African Americans—one third directly to families, one third to a newly elected government of the Republic of New Afrika (if a Black plebiscite so determined), and one-third to black community development organizations.<sup>41</sup>

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<sup>40</sup> James Forman, as quoted by Kelley, *Id.* at 123.

<sup>41</sup> From the account in Robin D.G. Kelley, *Ibid.*, at 127.

## 2) The contemporary legacy of slavery in the United States.

*I'm not bitter, neither am I cruel,  
But ain't nobody paid for slavery yet  
I may be crazy, but I ain't no fool.  
About my forty acres and my mule...*

*One hundred years of debt at ten percent  
Per year, per forty acres and per mule  
Now add that up...*

—Oscar Brown Jr., “Forty Acres and a Mule”, 1964<sup>42</sup>

In 1977, the television mini-series “Roots” based on the autobiography and family history traced back to Gambia, West Africa, of Alex Haley played in millions of white and black homes around the country, awakening perhaps as no other medium had to date, awareness of the roots of African-Americans, their denial of basic human rights, and to the ongoing legacy of slavery.<sup>43</sup>

Randall Robinson reminds us that slavery indeed is among the very worst of human rights violations and crimes against humanity because “it produces its victims, *ad infinitum*, long after the active stage of the crime has ended.”<sup>44</sup> Professor Raymond Winbush notes that “the continuing effects of 246 years of discriminatory Jim Crow laws can be seen everywhere in the United States, from the ‘ yawning economic gap between Blacks and whites,’ to the raw bitterness still separating the police and the Black community in many U.S. cities”<sup>45</sup>. Winbush quotes Professor Chris K. Iijima who has written, “The searing holocaust of American slavery has caused harm that is felt to this day. Not only is it felt in the social, economic and political legacy and condition of the

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<sup>42</sup> Oscar Brown Jr., “Forty Acres and a Mule”, 1964 copyright held by Edward B. Marks Music Co.

<sup>43</sup> Alex Haley, *ROOTS: THE SAGA OF AN AMERICAN FAMILY*, (New York: Doubleday, 1976). DVD of the series is available, Warner Studios, January 15, 2002, ASIN: B00005QW6Y.

<sup>44</sup> Randall Robinson, *THE DEBT*, at 216.

<sup>45</sup> Raymond Winbush, *SHOULD AMERICA PAY?* at 61, quoting Robinson, *Ibid.*, at 204.

various peoples of this nation, but in the way we define our national character. It is ingrained in the every fabric of our institutions. It operates often unconsciously through unquestioned cultural assumptions about what is natural”.<sup>46</sup>

Notwithstanding gains due to civil rights legislation and cultural changes, as a group Black Americans continue to experience extreme negative social and economic consequences of the structures established in the era of Jim Crow. Jon M. Van Dyke observes, “[The] overwhelming oppression of one group of humans by another allowed some to create wealth, while the oppressed group was first forbidden and then harshly constrained from accumulating any wealth.”<sup>47</sup> Kim Forde-Mazrui, citing the latest census studies, lays out in a recent article<sup>48</sup> that,

although whites outnumber blacks six to one, more blacks receive welfare than whites, blacks are twice as likely to be unemployed...Black children are three times more likely than white children to be born outside of marriage...to a mother who is twice as likely to be a teenager. Black infants die at two and a half times the rate of white infants, and those who live are placed in foster care at three times the rate of white children. Black children are twice as likely to develop serious health problems, including asthma, deafness, retardation, and learning disabilities, as well as problems resulting from drug or alcohol use during pregnancy. Black children are nearly four times more likely than white children to grow up in poverty, and among the urban poor, black children are three times more likely to live in economically segregated low-income neighborhoods. Blacks live an average of seven years fewer than whites, and of that life, blacks enjoy eight fewer years of ‘reasonably good health.’ Blacks are significantly more likely to suffer or die from serious diseases such as asthma and, especially, AIDS...Blacks are twice as likely to be victims of assault and three times as likely to be robbed; black men are seven times as likely to be murdered...and are incarcerated at eight times the rate of whites.<sup>49</sup>

Forde-Mazrui captures the legacy of the depressed social structure that continues to oppress most African-Americans when she quotes Alexander Aleinikoff, who writes:

In almost every important category, blacks as a group are worse off than whites. Compared to whites, blacks have higher rates of unemployment, lower family incomes, lower life expectancy,

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<sup>46</sup> Winbush, SHOULD AMERICA PAY, *Ibid.*, p.61, quoting Chris K. Iijima, Speech to the Annual Meeting of the American Association of Law Schools, January 4, 2001.

<sup>47</sup> Jon M. Van Dyke, “Reparations for the Descendants of American Slaves Under International Law”, in Winbush, SHOULD AMERICA PAY?, at 58.

<sup>48</sup> Kim Forde-Mazrui, “Taking Conservatives Seriously: A Moral Justification for Affirmative Action and Reparations”, 92 CAL. L. REV. 683 (May, 2004).

<sup>49</sup> *Id.* at 695-696.

higher rates of infant mortality, higher rates of crime victimization, and higher rates of teenage pregnancies and single-parent households. Blacks are less likely to go to college, and those who matriculate are less likely to graduate. Blacks are underrepresented in the professions, in the academy, and in the national government.<sup>50</sup>

Sociologist Glenn C. Loury has pointed out: “Who can say what the out-of-wedlock birth rate for blacks would be, absent chattel slavery? How does one calculate the cost of inner-city ghettos, of poor education, of the stigma of perceived racial inferiority?”<sup>51</sup>

The HIV/AIDS epidemic has hit the African-American community particularly hard, in no small measure because of the rates of persistent poverty and incarceration—especially among black young men.<sup>52</sup> Jacob Levenson reports the stories of people all around the country who give a human face of suffering and injustice to he alarming statistics—such as 54% of all new HIV cases in the United States involve African Americans and one in fifty black men are estimated to be infected with HIV, according to the Center for Disease Control (CDC). AIDS is the number one killer of black and white women between the ages of 22 and 45.<sup>53</sup>

The younger generation of African-Americans, known as the “Hip-Hop” generation, has hit the legacy of slavery head on, in pain, suffering, and their resulting expressions of rage and determination.<sup>54</sup> According to Bakari Kitwana, reparations is on the Hip-Hop generation’s agenda, along with issues focused on education, employment and worker’s rights, economic infrastructure in urban communities, youth poverty and disease, and anti-youth legislation—including criminal statutes, and foreign policy.<sup>55</sup>

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<sup>50</sup> *Id.* at p. 696, quoting T. Alexander Aleinikoff, “A Case for Race-Consciousness”, 91 COLUM. L. REV. 1060, 1065-66 (1991).

<sup>51</sup> Glenn C. Loury, as quoted in Diane Cardwell, “Seeking Out a Just Way to Make Amends for Slavery”, *New York Times*, August 12, 2000, available at <http://www.nytimes.com/library/arts/081200slavery-reparations.htm> (last visited may 4, 2005).

<sup>52</sup> See, Jacob Levenson, *THE SECRET EPIDEMIC: THE STORY OF AIDS AND BLACK AMERICA*, (New York: Anchor Books, 2004).

<sup>53</sup> *Id.*, at 22. The CDC Surveillance Reports are available at <http://www.cdc.gov> (last visited May 7, 2004).

<sup>54</sup> See, Bakari Kitwana, *THE HIP-HOP GENERATION: YOUNG BLACKS AND THE CRISIS IS AFRICAN-AMERICAN CULTURE*, (New York: BasicCivitas Books, 2002).

### **Post-Traumatic Slavery Syndrome (PTSS)<sup>56</sup>.**

Researchers in the field of psychology have demonstrated that “the consequence of white supremacy (racism) and its requisite negation and nullification of African people and things African (ideas, philosophy, history, traditions, et cetera) have resulted in more everlasting damage than the whip or the physical chains of bondage. In fact, in a very real way the physical damage and destruction of Black life was paralleled, if not precipitated, by an insidious assault on the psychological value of African human beingness.”<sup>57</sup> In his 1996 book “*Breaking the Chains of Psychological Slavery*”, Dr. Na’im Akbar writes: “The slavery that feeds on the mind, invading the soul of man, destroying his loyalties to himself and establishing allegiance to forces which destroy him, is an even worse form of capture”.<sup>58</sup>

Slavery exploited Blacks using degrading psychological techniques, including, torture, deprivation, distrust, threats, experimentation, and sophisticated systems of mind control, including forced dependence, fraud, and limiting information, association, and expression. For instance, white slave trainer Willie Lynch devised a strategy<sup>59</sup> to break down the resistance of slaves and control them that Malcolm X made reference to in his speeches and writings on how black self-hate and black against black conflicts (the

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<sup>55</sup> *Id.*, at 178-182.

<sup>56</sup> This section relies upon research contained in sections entitled “Psychology and Psychiatry’s Assault on the Mental Health of Black People”, “The Psychological Effects of Slavery”, and “Post-Traumatic Slave Syndrome (PTSS): An Explanatory Theory”, in the essay written by Jewel Crawford, Wade W. Nobels, and Joy DeGruy Leary, “Reparations and Health Care for African Americans: Repairing the Damage from the Legacy of Slavery”, in Winbush, SHOULD AMERICA PAY?, *Ibid.* at 258-271.

<sup>57</sup> *Id.*, at 258.

<sup>58</sup> Na’im Akbar, *BREAKING THE CHAINS OF PSYCHOLOGICAL SLAVERY*, (Tallahassee, Florida: Mind Productions & Associates, 1996), quoted in Crawford et al., at 263.

<sup>59</sup> The story of Lynch’s nefarious slave-training system is told in, *THE WILLIE LYNCH LETTER AND THE MAKING OF A SLAVE*, (Chicago: Frontline Distribution Int’l, 1999). Willie Lynch is discussed in Crawford et al., at 263-264.

“house negro” versus the “field negro”, for example) developed under the oppressive total control of slavery.<sup>60</sup>

### **The Maintenance of White Supremacy through “Network Economics”.**

Law Professor Brant T. Lee has written a law review article that thoroughly outlines the economic links and systems that play a major role in perpetuating White supremacy in the United States.<sup>61</sup> Professor Lee, using the linking dominance of Microsoft Windows software as a brilliant analogy, posits that “network effects” explain how:

(1) The establishment of a dominant market standard can be contingent on historical context, and it is not necessarily derived from superior intrinsic merit, and (2) a dominant standard exhibits strong self-reinforcing characteristics that can maintain the dominance of the standard in perpetuity, even in the absence of any explicit or conscious determination to maintain it.<sup>62</sup>

Lee then shows how these dynamics have been at work in the development of White supremacy in the U.S., saying, “This insight casts new light on mainstream explanations of racial inequality, supporting the critique that (1) current racial inequality is not the result of unequal ‘merit’, but is the legacy of history, and (2) no racist intent or conspiracy is required for this inequality to continue. Rather, specific intent and determination is required to dislodge it.”<sup>63</sup> (underline added).

**Stigma.** Law Professor R.A. Lenhardt has published a remarkably insightful and thorough study of the role of racial stigma in the continuing legacy of slavery.<sup>64</sup> In examining Fourteenth Amendment jurisprudence Professor Lenhardt explains why racism and discrimination is not necessarily, and often is not, intentional, and that

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<sup>60</sup> See, Malcolm X, THE FINAL SPEECHES, FEBRUARY 1965, ed. Steve Clark (New York: Pathfinder, 1992).

<sup>61</sup> Brant T. Lee, “The Network Effect Economic Effects of Whiteness”, 53 AM. U. L. REV. 1259 (August, 2004). Professor Lee teaches law at the University of Akron.

<sup>62</sup> *Id.*, at 1260.

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

<sup>64</sup> R.A. Lenhardt, “Understanding the Mark: Race, Stigma, and Equality in Context”, 79 N.Y.U.L. Rev. 803, June 2004.

dehumanizing stigma is a substantial part of the destructive and oppressive continuing legacy of slavery and Jim Crow.<sup>65</sup>

Corroborating Lenhardt's theory, Columnist Deborah Mathis, an African-American, in *Yet a Stranger: Why Black Americans Still Don't Feel at Home* (2002), writes,

There is a suspiciousness directed at black Americans that is unbecoming of a place called home...an awareness of being on shaky ground, of hostility bubbling just beneath the surface...that at any moment and with the least provocation, the little dance of tolerance may be abandoned, and there you'd have it: a full frontal assault of fear, anger, and deadly assumptions.<sup>66</sup> ...

We learn to recognize the Look very early in life...a look of unease, confusion, dislike, disapproval, alarm, dread, even hatred...it conveys myriad questions...It is impossible to describe the Look to those outside its range. Sometimes, I'm sure, the transmitter is hardly aware he or she has dispatched it. But black people can feel it as sharply as the cutting wind...If you are hit by it early in life or often enough, the Look can kill. Not you body, but your spirit. Kill your faith that you will ever belong. Kill your hopes that what you have to offer the world will ever be noticed, appreciated, nurtured, or rewarded. Kill your desire to participate, to go along, to get along. Snuff out your will to even try.<sup>67</sup>

Putting all of these notions together, we can look to scholar Gerald A. Foster, who has summarized the historical legacy of slavery this way:

Socially, the institution of slavery established rules both written and unwritten for black/white relations in America. Economically, slavery was the foundation upon which America's international power was developed. Politically, slavery was the bait that helped spark the American Revolutionary War in 1776 as the colonial excoriated King George III for supporting the slave trade worldwide. Yet, in 1788, when the U.S. Constitution was ratified, America permanently rendered African Americans chattel, relegated to a non-entity status with a legal value of three-fifths of a white man. Psychologically, due to the human and cultural degradation of blacks, the nation began to institute laws, policies, norms and daily practices that engendered the deep self hate in blacks that persists to this day.<sup>68</sup>

Harvard Professor Jennifer L. Hochschild agrees in her 2005 study "Looking Ahead: Racial Trends in the U.S."<sup>69</sup>:

... about a third of American blacks can be described as middle class... Still, perhaps a third of African Americans remain at the bottom of the various hierarchies in the United

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<sup>65</sup> *Id.*, see especially 814-847 and 930.

<sup>66</sup> Deborah Mathis, *YET A STRANGER: WHY BLACK AMERICANS STILL DON'T FEEL AT HOME* (New York: Warner Books, 2002), as quoted by publisher in inside front cover.

<sup>67</sup> *Id.*, at 15-16.

<sup>68</sup> Gerald A. Foster, "American Slavery: The Complete Story", *Ibid.* note at p. 420.

<sup>69</sup> Jennifer L. Hochschild, "Looking Ahead: Racial Trends in the U.S.", *DAEDULUS*, (Winter, 2005), at 70-81.

States. Compared with all other groups, poor blacks are more deeply poor, for longer periods of their life and from earlier in childhood; they are more likely to live among other poor people. Black children who begin their education with roughly the same knowledge and skills as white children lose ground in the public school system. Blacks are more likely to be victimized by crime than any other group, and black men are much more likely to be incarcerated and subsequently disenfranchised for life than are white men.

More generally, we cannot dismiss the possible persistence of what Orland Patterson once called the ‘**homeostatic principle of the entire system of racial domination,**’ in which racial subordination is repressed in one location only to burst forth in another.<sup>70</sup> Regardless of their income, African Americans are overcharged for their used cars, less likely to receive appropriate treatment for heart attacks, and less likely to receive excellent service from realtors and bankers. Blacks have drastically less wealth than whites with the same earnings. Whites seldom vote for black candidates when they have an alternative and even less often move into substantially black neighborhoods, schools and churches.<sup>71</sup> (emphasis added).

**The most egregious consequence of slavery and Jim Crow is the legacy of degradation of human rights and dignity that degraded the oppressors as well as the oppressed.**

Although we will look at human rights violations in more detail in a later section, it is appropriate to note that the legacy of slavery is fundamentally a scourge on treasured human rights—rights that all must protect if all are to share. Theologian Jürgen Moltmann has written about the spiritual nature of human dignity, fundamental freedoms, and human rights.<sup>72</sup> Slavery, as was the holocaust in WWII, was a spiritual as well as a physical crime. He reviews the various international human rights regimes in the context of a spirituality “from below” that has developed around the world, not just in the West—a sensibility that after the atrocities of World War II focused on the rights of the individual vis-à-vis the state. These rights have always existed because of the dignity of

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<sup>70</sup> Orlando Patterson, “Toward a Study of Black America”, *DISSENT* (Fall, 1989), at 476-486.

<sup>71</sup> Hochschild, *Ibid.* at 77-78.

<sup>72</sup> Jürgen Moltmann, *GOD FOR A SECULAR SOCIETY: THE PUBLIC RELEVANCE OF THEOLOGY*, translated from the German original (*GOTT IM PROJEKT DER MODERNEN WELT: BEITRÄGE ZUR OFFENTLICHEN RELEVANZ DER THEOLOGIE*, Chr. Kaiser/ Gutersloher Verlagshaus, Gutersloh, 1997) by Margaret Kohl, (Minneapolis: Fortress Press, 1999).

the human being, but have been legally framed and enforced for the most part only since the advent of the United Nations. He has analyzed the various rights of humanity and reduces them to groups as follows, and we can quickly observe that in the context of the history of slavery and its aftermath in the United States, *all of these rights were violated and are at the heart of slavery's legacy:*<sup>73</sup>

1. **Protective Rights.** The right to life, liberty and security.
2. **Rights to Freedom.** Freedom of religion, opinion and assembly.
3. **Social Rights.** The right to [freely chosen, adequate] work, to food, home and so forth.
4. **Rights of Participation.** The right to co-determination in politics and economic life.

### 3) The legacy of slavery in Africa.

*“Africa is having to pay a huge price once more for the historical accident that this vast and compact continent brought fabulous profits to western capitalism, first out of the trade in its people and then out of imperialist exploitation. The enrichment of one side of the world out of the exploitation of the other has left the African economy without the means to industrialise.”*

*--Kwame Nkrumah<sup>74</sup>*

Black Africa sacrificed 40 to 100 million souls to the slave trade; only 15 to 25 million survived.<sup>75</sup> The legacy of colonialism was a continent sheared of its traditional social structures, much of its natural wealth, the looting of its people and cultural wealth, and an utter demoralization in the face of its oppressive neighbors. Poverty, disease, and

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<sup>73</sup> *Id.*, see Chapter 3: “Human Rights—Rights of Humanity—Rights of the Earth”, p.117-134, see especially p. 121 (his summary of human rights) and p. 121 where he posits a brilliant conception of a “spiral of human rights”: “Let us try now to arrive at a systematic survey, in the form of a spiral of human rights in which the one points to the other, and the whole thrusts towards universality. 1) No individual human rights without social rights. 2) No human rights without the right of humanity to protection from mass annihilation and genetic change, and to survival in the sequence of generations. 3) No economic human rights without ecological obligations towards the rights of nature. 4) No human rights without the right of the earth.” [Note: the earth, community, and successive generations, are all very central to African Traditional values and religions].

<sup>74</sup> Kwame Nkrumah, *NEO-COLONIALISM: THE LAST STAGE OF IMPERIALISM*, (London: Thomas Nelson & Sons, 1965).

<sup>75</sup> *Id.*

death ensued. In contemporary Africa this has taken the face of the HIV/AIDS scourge that has been allowed to explode because of lack of educational and health resources and a deadly mix of cultural and political denial that is understandably deaf to Western advice.

**What Africa is Entitled to and Needs: Reparations, not charitable Foreign Aid.**

The U.N.'s Jubilee 2000 and The Millenium Project calls on developed nations to increase their foreign aid to a modest benchmark of .7% of their national budgets.<sup>76</sup> The United States is far down the list of contributing countries—U.S. foreign aid is currently at an abysmal .1%.<sup>77</sup> As appropriate and necessary as this call for increased foreign aid to developing countries is, it is a red herring when one considers what really is going on. This money is seen as charity with geopolitical undertones. This is unfortunate and in fact counter-productive if we want to see struggling countries grow in sustainable strength. Aid by itself helps to perpetuate cycles of domination, dependence, and oppression. More appropriate in places like Africa is for former (and present)exploiting countries to pay appropriate compensation and other reparations that establish healthy and productive restorative justice, empowering developing nations to help their people, empower them, and build their economies. Reparations are a better way to help developing countries improve their human rights record—especially when they see more powerful countries lead the way in doing the right thing, in addressing the sins of the past. Integrity, justice, and compassion are all contagious. Realistic foreign policy must take this into account. Unfortunately, thus far, the United States is going in the very opposite direction.

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<sup>76</sup> See, Jeffrey D. Sachs, *THE END OF POVERTY: ECONOMIC PROSPERITY FOR OUR TIME*, (New York: The Penguin Press, 2005)

<sup>77</sup> *Id* at 218.

**Dakar, Senegal. January 22-2, 2001.** The African Regional Preparatory Conference for the World Conference Against Racism. The Dakar Declaration<sup>78</sup> included these statements:

- The Slave Trade is a unique tragedy in the history of humanity, particularly against Africans, *a crime against humanity* that is unparalleled, not only in its abhorrent barbaric feature but also in terms of its enormous magnitude, its institutionalized nature, its transnational dimension, and especially its negation of the human nature of the victims.
- That the consequences of this tragedy, accentuated by those of colonialism and apartheid, have resulted in substantial and lasting economic, political, and cultural damage caused to the descendants of the victims, the perpetuation of the prejudice against Africans on the continent and people of African descent in the Diaspora.
- Strongly reaffirm that States that pursued racist policies or acts of racial discrimination, such as slavery, colonialism, and apartheid, should assume their full responsibilities and provide adequate reparations to those States, communities, and individuals who were victims of such racist policies or acts, regardless of when or by whom they were committed.<sup>79</sup>

Unfortunately, the United States and Israel walked out of the January 2001 United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance four days after it began in Dakar, Senegal, citing the Zionism=Racism issue. Many observers felt the real reason was the U.S.'s avoidance of the reparations issue, which had wide support of the other delegates to the Conference<sup>80</sup>.

The HIV/AIDS crisis, particularly in sub-Saharan Africa is an opportunity to direct reparations to Africa constructively and appropriately. Several years ago President Bush promised a total of \$15 Billion in aid over a period of ten years to combat the scourge that is decimating Africa.<sup>81</sup> The government is not staying current on that obligation.<sup>82</sup> But again, this money and other resources should be organized as part of a reparations

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<sup>78</sup> The Dakar Declaration, adopted at the 4<sup>th</sup> Regional Conference/General Assembly of the Inter-African Committee (IAC), organized jointly by WHO and IAC November, 1997), available at <http://umn.edu/humanrts/instree/dakar.html>.

<sup>79</sup> United Nations Economic and Social Council (ECOSOC), E/CN.4/1995/78/1, January 16, 1995, p. 3.

<sup>80</sup> As reported and discussed by Nontombi Tutu (daughter of South African Archbishop Desmond Tutu), in "Afterword", in Winbush, *SHOULD AMERICA PAY?* at 321-325.

<sup>81</sup> Sachs, "The End of Poverty", *Ibid.* at 343-344.

<sup>82</sup> *Id.*

plan, not charity. Considering the legacy of United States enslavement of millions of African Americans, the U.S. is the debtor nation, not those in Africa.

### **B) The Legal and Moral Case for Reparations.**

*Iure naturae aequum est neminem cum alterius  
deterimento et Iniuria fieri locupletiolem*

“By the law of nature it is fair that no one become richer by the loss and injury of another”<sup>83</sup> The effort to frame the demand for reparations in legally actionable terms has been a remarkable saga of dreams deferred and justice denied.

International law has always been clear that reparations are obligatory when there have been actual damages from violations of international law.<sup>84</sup> Even though international customary law is part of the supreme law of the land in the United States because of the Supremacy Clause of the Article VI of the Constitution, national law and the law of the various states has been desultory in applying this binding law, which includes human rights protections and remedies.<sup>85</sup> Instead, in the case of reparations, litigation thus far has faced domestic technical limitations and has been forced to rely on traditional common and positive law that has proven mostly ill-equipped to handle trans-generational controversies of the scope of the legacy of slavery and Jim Crow. Before examining the international human rights options in a later section, let us first review the domestic law efforts and theories that have been relied upon so far.

**Unjust Enrichment.** The case for reparations has been constructed from many considerations, but among the most prevalent is the equitable theory of unjust

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<sup>83</sup> DIG. 50.17.206 (Pomponius, Various Readings, Book 9)

<sup>84</sup> See Raymond Winbush, “Reparations for the Descendants of American Slaves Under International Law”, in Winbush, SHOULD AMERICA PAY?, at 60.

<sup>85</sup> See, J. Paust, *infra*, at Note .

enrichment. The elements classically necessary to establish actionable unjust enrichment are: 1) an enrichment; 2) an impoverishment; 3) a connection between the enrichment and the impoverishment; 4) the absence of justification for the enrichment and impoverishment; and 5) the absence of a remedy provided by law.<sup>86</sup> The application of this equitable cause of action and remedy in the case of slavery reparations is straightforward. The unjust enrichment of slaveholders and their society, costing the denial to African-American slaves of all accretments of freedom and fair labor, results in a constructive trust on the assets of those enriched—which as discussed earlier, is White-dominated America as a whole.

An early and still controlling slavery reparations case, according to Harvard Law Professor Charles Ogletree, is *Cato v. United States*<sup>87</sup>, in which an African-American woman brought a lawsuit against the United States alleging kidnapping, enslavement, transshipment of her ancestors, as well as continuing discrimination. She sought official acknowledgement of the injustice of slavery and Jim Crow and an official apology from the government. Her case was dismissed on two technical grounds, a harbinger of what was to come: the government had not consented to jurisdiction.

Adjoa A. Aiyetoro, Adjunct Professor of Law at Washington College of Law, American University, who has served as legal consultant to the National Coalition of Blacks for Reparations in America (N'COBRA), has surveyed the law and concludes that,

Litigation is a viable tool for obtaining reparations for African descendents if the legal claim is clearly identified and various procedural hurdles can be successfully mounted. Three procedural hurdles that must be addressed at the initial stages of litigation—Standing, statute of limitations and sovereign immunity—can be met using the experiences of African descendents [down to the present day]. Honoring he experiences

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<sup>86</sup> 66 AM. JUR. 2d Restitution and Implied Contracts § 12 (2001).

<sup>87</sup> *Cato v. United States of America*, 70 F. 3d 1103 (9<sup>th</sup> Cir., 1995).

and voices of those who seek reparations is imperative if the ultimate remedy is to heal the wounds of centuries of disdainful, brutal and inhumane treatment that the international community acknowledges as a crime against humanity.<sup>88</sup>

Tulane Law Professor Robert Westley, in his article “Many Billions Gone: Is It Time to Reconsider the Case for Black Reparations?” (1998)<sup>89</sup> paved the way for Randall Robinson’s best-selling book, *The Debt: What America Owes to Blacks* (2000), who acknowledges Westley in his opening acknowledgements.<sup>90</sup> Together they lay out a compelling contemporary version of the classic demand for reparations that cites, but does not depend on, litigation.

Restitution, as we have said, is the principle remedy flowing from unjust enrichment causes of action. One of the incisive legal studies of the applicability of restitution in the challenging inter-generational context of slavery reparations suits is “Restitution and Slavery: On Incomplete Commodification, Intergenerational Justice, and Legal Transitions” by law Professor Hanoch Dagan of Tel-Aviv University.<sup>91</sup> His study concludes with a summary of six propositions that emerge:

- 1) The demand of making restitution of benefits gained from enslaving other people is not foreign to our law. On the contrary, it epitomizes a line of cases in which the law of wrongful enrichments is used to vindicate people’s most fundamental rights to freedom and dignity. Because restitution for wrongful enrichment can vindicate such interests, rather than merely an interest in lost utility, allowing claims for **wrongful enslavement** need not commodify the horrors of slavery.
- 2) In order for wrongful enslavement claims to indeed vindicate autonomy, the applicable measure of recovery should include the perpetrators’ ill-gotten gains, rather than (merely) the slaves’ lost wages.
- 3) In those cases where restitutionary claims vindicate autonomy, allocating responsibility between defendants is unnecessary, because in such cases each is liable to disgorge its ill-gotten gains.

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<sup>88</sup> Adjoa A. Aiyetoro, “Formulating Reparations Litigation Through the Eyes of the Movement”, NYU ANNUAL SURVEY OF AMERICAN LAW, Vol. 58: 457, at 474 (2003).

<sup>89</sup> Robert Westley, “Many Billions Gone: Is It Time to Reconsider the Case for Black Reparations?”, BOSTON COLLEGE LAW REVIEW, Dec. 1998, Vol. XL, No 1.

<sup>90</sup> Randall Robinson, THE DEBT: WHAT AMERICA OWES TO BLACKS, (New York: Penguin Group, 2000).

<sup>91</sup> Hanoch Dagan, “Restitution and Slavery: On Incomplete Commodification, Intergenerational Justice, and Legal Transitions”, 84 B.U.L. REV. 1139 (December, 2004).

- 4) Because the question of whether descendants of slaves should have standing in pursuing restitution is, at its core, a concern of transforming the ancestors' inalienable right to control their labor into money, standing should be allowed if the descendants' claim is understood as a vindication of the infringement of their ancestors' rights which continuously and directly devastates their own dignity.
- 5) The restitutionary defense of bona fide purchaser for value can be understood as an alternative, and indeed superior, doctrinal tool to that of limitations in dealing with the difficulty of intergenerational justice entailed by the attempt to redress historic wrongs.
- 6) **Past legality (even constitutionality) of slavery need not bar restitutionary claims for wrongful enslavement because legal transition rules at times impose—and indeed should impose—some of the burden of our moral progress on beneficiaries of our past immorality.**<sup>92</sup>

### **Thirteenth Amendment—Prohibited Badges and Incidents to Slavery.**

Notwithstanding *Cato*, Thirteenth Amendment jurisprudence allows for recovery of damages for injuries sustained due to actions that flow from “badges and indicia” of slavery.<sup>93</sup>

As noted by Adjoa A. Aiyetoro, the jurisprudence of the 13<sup>th</sup> Amendment was revitalized in the case of *Jones v. Alfred H. Mayer Co.*, a 1968 Supreme Court case.<sup>94</sup> The Court in *Jones* identified the ongoing vestiges of slavery and then looked to legislation that was passed pursuant to the 13<sup>th</sup> Amendment, the Civil Rights Act of 1866<sup>95</sup>, and held that the defendant had indeed denied plaintiffs the right to purchase property protected by the Act.

Texas Southern University Law Professor Edieth Y. Wu has studied the failure of the United States to effectuate the fundamental human and civil rights guarantees and protections of the thirteenth, fourteenth, and fifteenth post-Civil War amendments to the United States Constitution and concludes,

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<sup>92</sup> *Id.* at 1175.

<sup>93</sup> See, e.g., *Civil Rights Cases*, 109 U.S. 3, 20 (1883). For further analysis, see Adrienne Davis, “The Case for United States Reparations to African Americans”, HUMAN RIGHTS BRIEF, American University Washington College of Law (2000).

<sup>94</sup> 392 U.S. 409, (1968), as cited in Aiyetoro, “Formulating Reparations Litigation”, *infra*, Note at 467.

<sup>95</sup> Civil Rights Act, ch. 31, 14 Stat. 27 (1866) (codified as amended at 42 U.S.C. § 1981 (1993)).

Obliviousness about White advantage and Black disadvantage is kept strongly inculcated in the U.S. in order to maintain the meritocracy myth...Like South Africa, America needs to unite the country and courageously accept the undeniable truth that cruel acts were committed against its former slaves, later its ex-slave citizens, and now the children and grandchildren [and great-grandchildren] of these ex-slave citizens. African Americans, the descendants of ex-slaves, may not have direct recollection of the specific cruelties, but they have faced severe limitations as a result of years of de facto practices and de jure laws that affected their liberties...After the passage of the 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> Amendments, the U.S. allowed its White citizens to continue to exploit and destroy a people...As late as 1995, a UN report estimated that American Whites would lead the world in well-being if they were a separate nation, but African Americans would rank 27<sup>th</sup> worldwide...<sup>96</sup>

**“Takings Clause”**. New York City practicing attorney Kaimipono D. Wenger cogently lays out the logical arguments that Slavery was, and remains, a violation of the prohibition of the “takings clause” of the Fifth Amendment to the United States Constitution—that labor and other assets were taken from African-Americans without due process and just compensation.<sup>97</sup> He concludes with a strong recommendation that “takings clause” constitutional cause of action be added to the more standard assertion of tort theories, because conservative courts will be more open to property and libertarian based arguments.<sup>98</sup>

U.S. decisions also support the claim that violations of international law (see below) cannot be waived or dismissed because of foreign policy goals without violating the Takings Clause, because such claims are valid and protected property rights. A seminal case was *Ware v. Hylton*<sup>99</sup> where the U.S. Supreme Court in 1796 held that British citizens were entitled to sue in U.S. courts for recovery of pre-Revolutionary War debts even though there was a peace treaty that purported to cancel those debts. The ruling was based on what Justice Samuel Chase called “immutable principles of justice” as well as

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<sup>96</sup> Edieth Y. Wu, “Reparations to African-Americans: The Only Remedy for the U.S. Government’s Failure to Enforce the 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> Amendments”, 3 CONN. PUB. INT. L.J. 403, (Spring, 2004) at 427-428, citing United Nations Development Programme, Human Development Report 1995, at 22.

<sup>97</sup> Kaimipono David Wenger, “Slavery as a Takings Clause Violation”, 53 AM. U. L. REV. 191, (October, 2003).

<sup>98</sup> *Id.* at 257-258.

<sup>99</sup> *Ware v. Hylton*, 3 U.S. (3 Dall.) 199 (1796).

the Fifth Amendment.<sup>100</sup>

**Equal Protection.** In 1973, White law Professor Boris Bittker of Yale published the landmark *The Case for Black Reparations*, which built a case for reparations to compensate blacks for egregious Jim Crow violations of the post-Civil War Fourteenth Amendment's Equal Protection Clause which bars discrimination.<sup>101</sup> He chose not to build the case for reparations for slavery itself.

**Farmer-Paellman v. FleetBoston<sup>102</sup>.** In January of 2004, in Illinois, U.S. District Court Judge Charles Norgle dismissed a reparations lawsuit against 18 banks, insurers, railroads, and tobacco companies that were alleged to have profited from slavery. The suit was brought by dozens of Africans-Americans, led by plaintiff Deadria Farmer-Paellmann. The case resulted in the discovery of substantial evidence supporting the plaintiffs' claims, but the Judge ruled that in his opinion he lacked the constitutional authority to decide the societal issue of reparations, which he said Congress should address.<sup>103</sup>

**“An Update on Corporate Slavery”.** In a milestone New York Times Editorial published January 31, 2005, we hear what concerned observers are seeing since the Farmer-Paellman suit has been dismissed:

Investors who visit the J.P. Morgan Chase web site these days are finding more than the usual corporate news. The bank has posted a letter of apology and the results of an eye-opening research project, which found that two of its predecessor banks had participated in the slave trade, accepting about 13,000 enslaved people as collateral for loans issued in Louisiana in the mid-nineteenth century. When the borrowers defaulted on their loans, the banks took ownership of some slaves and presumably sold them.

J.P. Morgan, which in addition to apologizing set up a scholarship fund for African-Americans in Louisiana, carried out this research to comply with a Chicago ordinance

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<sup>100</sup> *Id.*

<sup>101</sup> Boris Bittker, *THE CASE FOR BLACK REPARATIONS*, (Boston: Beacon Press, 1973, 2003).

<sup>102</sup> *Farmer-Paellmann v. FleetBoston Financial Corp.* (E.D.N.Y., 2002) (Case No. 02-CV-1862).

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

that requires companies doing business with the city government to divulge any links to slavery. A similar statute covers insurance companies operating in California, where several of the country's largest insurers have divulged links to slavery. These disclosures are exposing 18<sup>th</sup>- and 19<sup>th</sup>-century Northern businesses that sought to profit from the slave trade even after slavery had been outlawed in the North.

The disclosure laws grew out of an early attempt to seek damages from present-day companies for the misdeeds of their historical predecessors [Farmer-Paellman]. The courts never took the reparations argument seriously, but the revelations of Northern corporate involvement were timely in the civic sense. They coincided with a revival of interest in slavery in the North, where many Americans had grown up believing that slavery had been confined to the cotton fields of the South.

When the new business disclosures are discussed publicly and integrated into the historical record, Americans will have been made aware that the tendrils of slavery spanned the length of the country and extended into the Northern financial elite. The inclusion of records of long-buried slave transactions on corporate Web sites shows that the process of reappraisal is well underway.<sup>104</sup>

### **Reparations: A Derivative Claim?** Prosser and Keeton note that derivative tort

Claims (claims made that stem primarily from injury to another person in whom the claimant has a legally recognized interest) are generally not well received in the courts.<sup>105</sup>

The closest analogy to slavery reparations is the wrongful death cause of action, which has closely prescribed limitations, and is one of the few exceptions to public policy against derivative claims. Reparations, however, can be distinguished from the usual private tort action on the grounds that reparations involves in addition to the claim of succession, an independent, ongoing injury with resulting proximately caused damages to the descendants of slavery.<sup>106</sup>

### **Class actions and other Collective Remedies**<sup>107</sup>. New York University Law

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<sup>104</sup> Editorial Board, New York Times, January 31, 2005.

<sup>105</sup> See, W. Page Keeton et al., PROSSER AND KEETON ON THE LAW OF TORTS, (5<sup>th</sup> edition, 1984), §§74, 79, and 494.

<sup>106</sup> See also, generally, Keith N. Hylton, "Slavery and Tort Law", 84 B.U.L. REV. 1209 (December, 2004), where the author suggest that the FleetBoston Petition and evidence was too light on statistical evidence and analysis, and citations, to establish the form of restitution that the author suggests should be called "rectification", see pp. 1254-1255.

<sup>107</sup> See, generally, Daryl J. Levinson, "Collective Sanctions", 50 Stan. L. Rev. 345 (November, 2003); and Paul R. Dubinsky, "Justice for the Collective: The Limits of the Human Rights Class Action", 102 MICH. L. REV. 1152 (May, 2004), in which the author argues that "Collective victims need procedural rules specifically written with human rights class actions in mind [vis-à-vis Federal Rule 23].", at 1189.

Professor Burt Neuborn<sup>108</sup> worked on the Swiss banking cases stemming from the Holocaust committed by the Germans and co-conspirators in World War II. Neuborn argues that those recovery-of-funds cases may demonstrate the applicability of traditional notions of restitution for the numbers of claimholders involved in slavery reparations. In the 2003 edition of the *New York University Annual Survey of American Law*, he writes “The critical question is whether litigation seeking restitution of the unjust enrichment flowing from Slavery can replicate the three crucial components of the Holocaust litigation: (1) the identification of massive wealth transfers to identifiable recipients that unjustly enriched the recipients; (2) a demonstration that the wealth transfers were unlawful; and (3) the ability to reverse the transfers by requiring restitution of unjustly acquired profits to identifiable victims.”<sup>109</sup>

Reparations litigation seeking collective remedies should proceed under and satisfy the requirements of Federal Rule of Civil Procedure 23, which provides that classes of plaintiffs must establish that the proposed class is (1) of a size that renders joinder impracticable, (2) that shares common questions of law or fact, (3) one whose members share like claims and defenses, and (4) one whose representatives are able to protect the interests of the class.<sup>110</sup>

**Leading Coalitions** in the Reparations movement, who are making the case for reparations using a combination of these theories day in and day out are:

- The National Black United Front (NBUF) and the Dec 12<sup>th</sup> Movement
- The National Coalition of Blacks for Reparations in America (N’COBRA)
- The World Conference Against Racism (WACR)

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<sup>108</sup> As recounted in Ellis Cose, *BONE TO PICK*, at 162, citing, Burt Neuborne, “Holocaust Reparations Litigation: Lessons for the Slavery Reparations Movement”, *NEW YORK UNIVERSITY ANNUAL SURVEY OF AMERICAN LAW*, vol. 58, 2003.

<sup>109</sup> Cose, *Id* at 162-163.

<sup>110</sup> FED. R. CIV. P. 23 (a).

- The Reparations Coordinating Committee (RCC)
- The Black Radical Congress (BRC)
- The Africa Reparations Movement (ARM)
- The TransAfrica Forum
- National Action Network (NAN)

Robin D. G. Kelley noted in 2002 that many scholars and activists have been doing significant work to calculate what slavery and racial discrimination has cost African-Americans—leaders such as Robert Allen, Kimberle Crenshaw, William Darity, Jr., David Swinton, Robert F. Fullinwider, Clarence Munford, Melvin Oliver, Thomas Shapiro, and Randall Robinson.<sup>111</sup> The absence of White organizations is not particularly surprising, but it is wrong.

**Whites need to seek restorative justice, including reparations, even more than blacks.**

The legacy of slavery is a moral cancer on the soul of America. White America needs healing. The integrity that would spring from making things right would reenergize a wandering, worried people. The joy that would usher forth from reconciliation would shine a light into countless dark places in a country that knows deep down that the vision of its founders and prophets has yet to be achieved. A subconscious weight around an economy that is out of sync and in danger of becoming a two class system—the wealthy, and the poor—would be lifted, and a death knell would be dealt to the resulting legacy of anger, guilt, and confusion.

The white dominated economic system certainly would not suffer or fail. With the undeveloped and under-developed receiving assistance, local and regional economies would be diversified and stimulated, and tax revenues would increase dramatically.

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<sup>111</sup> Robin D. G. Kelley, *FREEDOM DREAMS: THE BLACK RADICAL IMAGINATION*, (Boston: Beacon Press, 2002) at 114.

### C) The Case against Reparations.

Scholars who view reparations as a misguided movement<sup>112</sup> often point to questions of cultural philosophy and implementation. On the street, however, one hears several common refrains, what one writer has called The “Big Five” Objections. Molly Secours has identified what she believes to be the five most common objections to slavery reparations: “1) My family didn’t own slaves. 2) I’m not a racist. 3) Reparations is only going to divide us more. 4) Blacks receive preferential treatment. What about me? And 5) Slavery is over. Let’s move on and forget about the past.”<sup>113</sup> Deborah Matthis has written that white objections boil down to “What more do you people want?”<sup>114</sup>

John McWhorter, in “Against Reparations”<sup>115</sup>, offers a sophisticated philosophical and cultural attack on proposals for slavery reparations, especially taking author Randall Robinson to task, arguing that current government social programs are sufficient to attack the social deficit of stricken Americans—of whatever color and background. McWhorter is among those who contend that sociopolitical misconceptions pervasive among blacks thwart black advancement than does any lingering white supremacy.<sup>116</sup>

David Horowitz has engaged in perhaps the most publicly promoted white opposition to slavery reparations. In his book, “*Uncivil Wars: The Controversy Over Reparations for Slavery*”<sup>117</sup>, at his website “FrontPageMagazine.com”, and in advertisements placed

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<sup>112</sup> See, e.g., Peter Schruck, “Slavery Reparations: A Misguided Movement”, at <http://jurist.law.pitt.edu/forum/forumnew78.php>.

<sup>113</sup> Molly Secours, “Riding the Reparations Bandwagon”, in Winbush, SHOULD AMERICA PAY? at 286- 298.

<sup>114</sup> Deborah Mathis, YET A STRANGER: WHY BLACK AMERICANS STILL DON’T FEEL AT HOME, (New York: Warner Books, 2002), at 15.

<sup>115</sup> John McWhorter, “Against Reparations”, in SHOULD AMERICA PAY/, Ibid., pp. 180-196.

<sup>116</sup> See McWhorter, *Id.* and, same author, LOSING THE RACE: SELF-SABOTAGE IN BLACK AMERICA, (New York: The Free Press, 2000).

<sup>117</sup> David Horowitz, UNCIVIL WARS: THE CONTROVERSY OVER REPARATIONS FOR SLAVERY, (San Francisco: Encounter Books, 2001).

in college newspapers around the country in the spring of 2001, Mr. Horowitz seeks to advance what he has termed “Ten Reasons Why Reparations for Blacks is a Bad Idea for Blacks—and Racist Too”.<sup>118</sup> They are:

1) There is no single group clearly responsible for the crime of slavery; 2) there is no one group that benefited exclusively from its fruit; 3) only a tiny minority of white Americans ever owned slaves, and others gave their lives to free them; 4) America today is a multi-ethnic nation and most Americans have no connection (direct or indirect) to slavery; 5) The historical precedents used to justify the reparations claim do not apply, and the claim itself is based on race not injury; 6) the reparations argument is based on the unfounded claim that all African-American descendants of slaves suffer from the economic consequences of slavery and discrimination; 7) the reparations claim is one more attempt to turn African-Americans into victims, it sends a damaging message to the African-American community; 8) reparations to African-Americans have already been paid; 9) what about the debt Blacks owe to America; and 10) the reparations claim is a separatist idea that sets African-Americans against the nation that gave them freedom.<sup>119</sup>

There was a flurry of public and scholarly responses to Horowitz’s broadside.<sup>120</sup> Many pointed out Horowitz’s refusal to take questions following lectures on the reparations topics and, more substantively, describe his points as patronizing revisionist history that ignore the facts, gives credence to white supremacy assumptions, and is void of logic—one responder wrote “By the same perverted logic, a kidnap-beating-rape victim would owe a debt [and so would her family] if he finally let her go free.”<sup>121</sup>

#### **D) The Guiding Light of Human Rights.**

The Universal Declaration of Human Rights (1948) includes the following Article:

*“No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms”.*<sup>122</sup>

A virtually identical prohibition is found in all other major international and regional

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<sup>118</sup> See, e.g., “Ten Reasons Why Reparations for Blacks is a Bad Idea for Blacks—and Racist Too”, available at <http://www.frontpagemag.com/Articles> (last visited May 4, 2005).

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

<sup>120</sup> See Note 115.

<sup>121</sup> Joseph Anderson, “Why David Horowitz’s ‘Reparations Ad was Racist’”, available at [http://lists.village.virginia.edu/lists\\_archive/sixties-1/3045.html](http://lists.village.virginia.edu/lists_archive/sixties-1/3045.html) (last visited May 4, 2005).

<sup>122</sup> Universal Declaration of Human Rights, art. 4, December 10, 1948, U.N.G.A. Res. 217A, 3 U.N. GAOR U.N. Doc. A/810 at 71 (1948).

human rights treaties instruments, including Article 8 (1) of the International Covenant on Civil and Political Rights (1966)<sup>123</sup> and Article 6 (1) of the [Inter-] American Convention on Human Rights<sup>124</sup>. The prohibition of slavery was one of the first human rights in the twentieth century to evolve by consent and practice as a universally preemptory and binding norm, or *jus cogens*.<sup>125</sup> It is an obligation upon every state in the world, it is *erga omnes*.<sup>126</sup> As such, the prohibition of slavery, along with the right to life and the right not to be tortured, is in the very highest protected category of international customary law—the authoritative *Restatement of the Foreign Relations Law of the United States* includes slavery as one of the universally condemned human rights violations, stating unequivocally that persons who participate in the enslavement of others can be punished and sued by their victims for compensation wherever they may be found.<sup>127</sup> The Rome Statute of 1998 establishing the framework for the International Criminal Court includes engaging in acts of enslaving others as included in the Statute’s definition of crimes against humanity which may be internationally prosecuted.<sup>128</sup>

For those who may ask why the United States is bound by international customary law and the law of treaties it is a party to, the answer is as important as it is straightforward. Article 6 of the United States Constitution sets out that such law is part

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<sup>123</sup> International Covenant on Civil and Political Rights, art. 8 (1), December 16, 1966, 999 U.N.T.S. 171 (1966) (“No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited”).

<sup>124</sup> American Convention on Human Rights, art. 6 (1), November 22, 1969, 1144 U.N.T.S. 123, O.A.S. Treaty Ser. No. 36 (1969), 9 I.L.M. 673 (1970) (“No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women”).

<sup>125</sup> See, e.g., The Slavery Convention, September 25, 1926, 60 L.N.T.S. 253, 46 Stat. 2183; Protocol Amending Slavery Convention, December 7, 1953, 182 U.N.T.S. 51.

<sup>126</sup> For a discussion of *jus cogens* and *erga omnes*, see W. Michael Resiman et. al., *supra* note , at

<sup>127</sup> RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, sec. 702 and sec. 703(3) (1987).

<sup>128</sup> Rome Statute of the International Criminal Court, art. 7(1)(c), July 17, 1998. This treaty took effect on July 1, 2002 and applies to states that have ratified it. To date over 150 countries have become parties to the treaty, the United States is not yet among them.

of the supreme law of the land, binding on federal, state, and local governments: “...all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or laws of any State to the Contrary notwithstanding.”<sup>129</sup> The United States Supreme Court famously reiterated this constitutional rule in the famous case of *The Paquete Habana* decided in 1900 and still controlling: “International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction...”<sup>130</sup>

**International Human Rights Law has much to say about remedies.**

The classic principle that still guides international norms of providing remedies for human rights violations is *restitution in integrum*, which is--making restitution wholly, completely, in full, with one mind. It is consistent with common law equitable responses to unjust enrichment: restitution.

The Universal Declaration of Human Rights says that “Everyone has the right to an *effective remedy* by the competent national tribunals for acts violating the fundamental rights granted him [sic] by the constitution or by law”.<sup>131</sup> Likewise, the International Covenant on Civil and Political Rights, which has been ratified by more than 140 countries, including the United States, provides that “Each State Party to the present Covenant undertakes: (a) To *ensure* that any person whose rights or freedoms as herein recognized are violated shall have an *effective remedy*, notwithstanding that the violation

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<sup>129</sup> Constitution of the United States of America, ARTICLE VI, Section 1, Clause 2. And see, Jordan J. Paust, “Customary International Law and Human Rights Treaties Are Law of the United States, 20 MICH. J. INT’L L. 301 (1999).

<sup>130</sup> *The Paquete Habana*, 175 U.S. 677, 700 (1900). For a discussion see Harold Hongju Koh, “International Law as Part of Our Law”, 98 AM. J. INT’L L. 43 (January, 2004).

<sup>131</sup> Universal Declaration on Human Rights (1948), Article 8.

has been committed by persons acting in an official capacity...”<sup>132</sup> Finally, the regional [Inter-] American Convention on Human Rights sets out that “Everyone has the right to simple and *prompt* recourse...for protection against acts that violate his [sic] fundamental rights...”<sup>133</sup>

The [Inter-] American Court of Human Rights landmark case on the right to an *effective remedy* is *The Velasquez Rodriguez Case*<sup>134</sup>, which held that the Convention mutually obligated each state party to actualize their “legal duty to...ensure the victim[s] adequate compensation.”<sup>135</sup> The Court further stated

This obligation implies the duty of the State Parties to *organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridicially ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must *prevent, investigate and punish* any vilation of the rights recognized by the Convention.*<sup>136</sup> (emphasis added).

The Court went on to explain that the rights so protected include the right to compensation.<sup>137</sup>

The United Nations Human Rights Commission and its Sub-Commission have drafted “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of International Human Rights and Humanitarian Law”, which include strong statements on restitution, rehabilitation, compensation, and satisfaction.<sup>138</sup> In addition, the Rome Statute of the International Criminal Court provides that offenders are to pay reparations, including the use of a trust fund when awards from individuals are not feasible.<sup>139</sup>

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<sup>132</sup> International Covenant on Civil and Political Rights (1966), Article 2.

<sup>133</sup> American Convention on Human Rights (1969), Article 25

<sup>134</sup> *Velasquez Rodriguez*, Inter-American Ct. of H. R. (Ser. C0 No. 4, (1988).

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> “Draft Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of International Human Rights and Humanitarian Law”, U.N. ESCOR, 56<sup>th</sup> Sess., Annex at 6-7, U.N. Doc. E/CN.4/2000/62 (2000), available at <[www.unchr.ch/huridocda/huridoca.nsf/](http://www.unchr.ch/huridocda/huridoca.nsf/)>(last visited April 30,2005).

<sup>139</sup> Article 75, “Reparation to Victims”, and Article 79, “Trust Fund”, Rome Statute of an International

The following are some of the instruments of the international human rights regime that prohibit state participation in slavery and the numerous human rights violations that accompany it (such as denial of right to life, health, and education; freedom from torture and degrading treatment; right to adequate food, water, shelter; right to marry and protection of family unit; right to work and fair labor wages and conditions; right to own property; right to vote and participate civilly and culturally; right to rest and leisure; special protective rights of children and women; freedoms of movement, religion, expression, and association; the right to privacy; the right to due process; right to nationality; right to self-determination):

- **Slavery Convention of the League of Nations (1926)**<sup>140</sup>
- **The Universal Declaration of Human Rights (1948)**
- **Supplementary Convention on the Abolition of Slavery (1956)**<sup>141</sup>
- **The International Covenant on Civil and Political Rights (1966)**<sup>142</sup>
- **The International Covenant on Social, Cultural and Political Rights (1966)**<sup>143</sup>
- **[Inter] American Convention on Human Rights (1969)**<sup>144</sup>
- **International Convention on the Elimination of All Forms of Racial Discrimination (1965)**<sup>145</sup>
- **Convention on the Elimination of all Forms of Discrimination Against Women (1979)**<sup>146</sup>
- **Convention on the Rights of the Child (1989)**<sup>147</sup>
- **Convention on the Prevention and Punishment of the Crime of Genocide (1948)**<sup>148</sup>
- **Rome Statute of the International Criminal Court (1998)**<sup>149</sup>
- **Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000)**<sup>150</sup>

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Criminal Court, U.N. G.A.O.R., 53<sup>rd</sup> Sess. U.N. Doc. A/CONF. 183/9 (1998).

<sup>140</sup> Slavery Convention, September 25, 1926, 46 Stat. 2183, 60 L.N.T.S. 253

<sup>141</sup> September 7, 1956, 18 U.S.T. 3201, T.I.A.S. No. 6418.

<sup>142</sup> December 16, 1966, 999 U.N.T.S. 171.

<sup>143</sup> December 16, 1966, 993 U.N.T.S. 3.

<sup>144</sup> November 22, 1969, O.A.S.T.S. No. 36.

<sup>145</sup> December 21, 1965, U.N.T.S. 195.

<sup>146</sup> December 18, 1979, U.N.G.A. res. 34/180 (XXXIV).

<sup>147</sup> December 12, 1989, Doc. A/RES/44/25.

<sup>148</sup> December 9, 1948, 78 U.N.T.S. 277.

<sup>149</sup> Rome Statute, *Ibid.*

<sup>150</sup> G.A. Res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001).

I posit that the human rights promoted and protected by these international instruments apply to African-Americans in two ways: (1) The human rights they protect are timeless; the United States can and should acknowledge the responsibility that it carries for violating human dignity and fundamental freedoms even before all such rights were formally codified, and (2) African-Americans human rights are *now* daily being affected and violated because of the ongoing legacy of slavery and Jim Crow.

#### **E) The Claims of Restorative Justice.**

Since 1989, Michigan Congressman John Conyers has annually introduced legislation to move forward efforts to achieve a measure of restorative justice regarding slavery's legacy<sup>151</sup>. His bill's object is "to acknowledge the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the United States and the 13 American colonies between 1619 and 1865"<sup>152</sup>, and it seeks to establish a seven-member commission to decide whether the United States should formalize an apology for slavery, determine what the long-term effects of slavery have been, and ascertain what responses and remedies would be appropriate.

Congressman Conyer's call for a commission can be seen as means of inviting the American "community" to the table to engage in an exploration of the needs, responsibilities, and opportunities before us as we continue to grapple with the legacy of

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<sup>151</sup> See, H.R. 40, 109<sup>th</sup> Congress (2005), co-sponsored by 31 representatives. See also Raymond A. Winbush, *supra* note , at 59-60. Congressmen such as Tony Hall from Ohio and John Lewis from Georgia have been leading also in the legislative effort. The current status of H.R. 40: it has been referred to the Subcommittee on the Constitution. The title of H.R. 40 is: "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, subsequently 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." Available at <http://thomas.loc.gov/cgi-bin/bdquery/D?d109:8:/temp/~bd9JSG::> (last visited May 4, 2005).

<sup>152</sup> *Id.*

the crimes of slavery and Jim Crow. This is precisely what occurs day in and day out in homes, shelters, courthouses, community centers, boardrooms, and places of worship all around the world every day. Trying to “make things right”—in order to clear the air, heal the wounds, mend relationships, facilitate forgiveness, and move with positive focus and a collaborative plan into the future. This looks different than standard adversarial models of justice that focus on punishment. This looks like what scholars and practitioners call “restorative justice”. It also includes components of mediation, transitional justice, and corrective justice.

**Restorative justice** has its contemporary American origins in alternative conflict resolution theories, which in turn has roots in both secular and religious philosophies and practices of peacemaking and reconciliation. The Mennonite Howard Zehr is one of the leaders in this movement in the United States and has written a guide to the concepts of restorative justice as it is understood and being applied by practitioners in a variety of settings, but in particular the criminal justice system<sup>153</sup>.

The cardinal principles of applied restorative justice are the following:

- 1. Restorative justice focuses on the victims’ harms and needs, not rules and laws.**
- 2. Restorative justice emphasizes the responsibility of the offender to make things right, and sees punishment as secondary to restoration of those affected.**
- 3. Restorative justice seeks to engage all “stakeholders” in a process of creative problem-solving that addresses the needs of victims and the responsibility of offenders, and seeks to reconcile everyone’s best interests.**<sup>154</sup>

These principles are straightforward, yet powerful. Faith-based organizations have

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<sup>153</sup> Howard Zehr, *THE LITTLE BOOK OF RESTORATIVE JUSTICE*, (Kihei: Good Books, 2002), see Especially “Three Pillars of Restorative Justice”, pp. 22-25, and “Fundamental Principles of Restorative Justice”, pp. 64-69.

<sup>154</sup> *Id.*

taken the lead in using in applying variations of these restorative ideas. The Roman Catholic Church, for instance, has taken a lead in restorative peace and social justice efforts in the United States.<sup>155</sup> It also is a leading force for justice around the world—one of the most prominent successes being of course in South Africa where Archbishop Desmond Tutu inspired and guided the Truth and Reconciliation Commission Process, applying the theological, spiritual, and institutional resources of his Catholic faith to move South Africa from a cycle of repression and recrimination, to one directed at healing, using a collaborative restorative justice methodology, with historic results<sup>156</sup>.

The work Eric J. Miler has done on a “Conversational Model” for approaching reparations bears much similarity with concepts of restorative justice that focus on the healing of relationships.<sup>157</sup>

#### **F) The Conscience of American Faith(s) and Values.**

David Hall notes in a recent law review article that “Some authors have persuasively demonstrated how restitution, and thus reparation, in addition to their long-standing legal tradition, have deep spiritual roots within various religious traditions.”<sup>158</sup>

Jim Wallis, editor of the progressive Christian journal *Sojourners* recently published “*God’s Politics*” a New York Times bestseller<sup>159</sup>. In Chapter 19, “Truth Telling About

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<sup>155</sup> See, e.g. the information and reports available at the website for Catholic Social Services, available at [http://www.catholicrelief.org/about\\_us/who\\_we\\_are/global\\_partners/us/domestic.cfm](http://www.catholicrelief.org/about_us/who_we_are/global_partners/us/domestic.cfm) (last visited May 9, 2005).

<sup>156</sup> See, Mary Burton, “Custodians of Memory: South Africa’s Truth and Reconciliation Commission”, 32 INT’L J. LEGAL INFO. 417 (2004); and Rosemary Nagy, “Violence, Amnesty and Transitional Law: ‘Private’ Acts and ‘Public’ Truth in South Africa, 1 AFR. J. LEGAL STUD. 1, (2004).

<sup>157</sup> Eric J. Miller, “Reconceiving Reparations: Multiple Strategies in the Reparations Debate”, 24 B.C. THIRD WORLD L. J. 45, (Winter, 2004).

<sup>158</sup> David Hall, “The Spirit of Reparation”, 24 B.C. THIRD WORLD L.J. 1, at 1, citing Michael L. Hadley, ed. THE SPIRITUAL ROOTS OF RESTORATIVE JUSTICE (New York: State University of New York Press, 2001).

<sup>159</sup> Jim Wallis, GOD’S POLITICS, A NEW VISION FOR FAITH AND POLITICS IN AMERICA, (New York: HarperSanFrancisco, 2005). As of May 1<sup>st</sup>, the book had been on the New York Times Book Review hardcover non-fiction bestseller list for 13 weeks.

Race--America's Original Sin", Wallis chronicles developing efforts by people of faith to call America to account for the legacy of slavery—which he calls America's "original sin".<sup>160</sup>

**"Divided by Faith"**. In a book that rocked the evangelical and mainstream protestant world, authors Michael Emerson and Christian Smith laid out in *"Divided by Faith: Evangelical Religion and the Problem of Race in America"*(2000)<sup>161</sup> the results of their sociological research—they conducted phone surveys of 2,000 people and face-to-face interviews with 200 others. They found that most white evangelicals see absolutely no systematic oppression against blacks and they deny the existence of any ongoing racial problem in the United States. Emerson and Smith attribute this denial to an evangelical worldview that emphasizes individualism, free will, personal—especially sexual—morality, and the belief that social problems can be best solved through individual conversion.

The evangelical Christian presence and influence in politics has risen spectacularly in recent years<sup>162</sup>, and thus the findings presented in *Divided by Faith* are alarming—no matter what one's views on reparations—if the problem itself is denied, then the issue becomes even more problematic.

There is a measure of hypocrisy I think in the conservative religious passion that has been driving the efforts of many Whites to be active in the fight against modern day slavery—the scourge of human trafficking. Not that such effort is unfortunate. Not at all—in fact, everyone involved is crying out that the level of action needs to be

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<sup>160</sup> *Id.*, pp. 307-320.

<sup>161</sup> Michael O. Emerson and Christian Smith, *DIVIDED BY FAITH: EVANGELICAL RELIGION AND THE PROBLEM OF RACE IN AMERICA*, (New York: Oxford University Press, 2000).

<sup>162</sup> See, e.g, the discussion in Jim Wallis, *GOD'S POLITICS* (2005), *supra*.

intensified at all levels<sup>163</sup>. It is estimated that 600,000 to 2 million persons are trafficked internationally every year around the world, including the United States, and governments and law enforcement are often in the dark and ineffective when they do get engaged. It is estimated that millions more are trafficked within national borders, and that 27 million people are oppressed in enslaving conditions worldwide.<sup>164</sup> The recently disseminated *Miami Declaration of Principles to Combat Human Trafficking*<sup>165</sup> lay out what needs to be done. But I believe that being able to fight human trafficking has allowed white America to deflect, evade and deny accountability for its own legacy of slavery. First things first: White America cannot say proudly that is a flagship for liberty when it refuses to balance the accounts of justice. There is a bill to pay. There is a wound to heal. There is an opportunity to grasp.

White American churches have a grievous history of supporting slavery and Jim Crow. Abolitionist faith communities were in the vast minority when it counted.<sup>166</sup> Most churches held on to conservative views of the Bible that supported slavery, ignoring the radical social implications of the gospel of Jesus.<sup>167</sup> Mainline and liberal denominations did break through progressively during the social gospel period (1870-1920, with its heyday in the years 1897-1910)<sup>168</sup> and then again during the civil rights era. Since then

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<sup>163</sup> See, Kevin Bales, *DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY*, (Berkeley: Univ. of Calif., 2004). See also the upcoming inaugural issue of the *Intercultural Human Rights Law Review* of St. Thomas University School of Law (Summer 2005) which will be devoted to combating human trafficking.

<sup>164</sup> “Preamble”, in “Miami Declaration of Principles on Human Trafficking”, see note 151.

<sup>165</sup> “Miami Declaration of Principles on Human Trafficking”, Feb. 10, 2005, available at <http://diplomacymonitor.com/stu/dm.nsf/InfoDeclaration?OpenPage> (last visited March 5, 2005).

<sup>166</sup> Emerson and Smith, *DIVIDED BY FAITH*, *Ibid.*, at 30-37.

<sup>167</sup> *Id.*, and see, See, e.g., William E. Panell, *THE COMING RACE WARS? A CRY FOR RECONCILIATION* (Grand Rapids: Zondervan, 1993).

<sup>168</sup> See the classic, Robert T. Handy, ed., *THE SOCIAL GOSPEL IN AMERICA*, (New York: Oxford University Press, 1966). The Rev. Charles M. Sheldon, a Congregationalist minister in Topeka, Kansas, wrote a social gospel novel that became the best seller of all time until surpassed recently—it’s title: *IN HIS STEPS: WHAT WOULD JESUS DO?* (1897). One of Sheldon’s ministries was in the struggling TennesseeTown neighborhood adjoining his parish and the church began, among other

conservatives have led a retrenchment of laissez faire attitudes. Only very recently have progressives and liberals attempted to again step forward into the battle.

The Reagan and Bush era conservatism is not reflective of the upsurge in theological reflection on human rights that has accompanied the human rights post-WWII movement. For example, Hans Kung, a Swiss Roman Catholic and Jurgen Moltmann, a German Lutheran, have both taught many years at the University of Tubingen, Germany, where they have produced seminal works on a post-war “global ethic” that protects human rights and protects the environment.<sup>169</sup> In the United States, scholars such as George Lundy have likewise led the way in articulating biblical and systematic theology that is oriented toward an ethic of peace and social justice.<sup>170</sup>

Some churches have taken steps to address the issue of reparations. An example cited by the group “Millions for Reparations” is a local congregation named Trinity United Church of Christ that adopted a Reparations Resolution that included the following statements:

THEOLOGICAL RATIONALE:

The lord said to Moses: If anyone sins and is unfaithful to the Lord...about something...stolen...when he thus sins, and becomes guilty, he must return what he has

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things, a kindergarten for the black children of families of ex-slaves from Tennessee. One of the children in that kindergarten, Elijah Scott later, under the tutelage of Sheldon, became a successful trial attorney in Topeka and named his son Charles Sheldon Scott, after the Pastor. Charles Sheldon Scott was one of the local attorneys who prepared, filed, and argued *Brown v. Board of Education* (1954). See, Timothy Miller, *FOLLOWING IN HIS STEPS: A BIOGRAPHY OF CHARLES M. SHELDON*, (Knoxville, University of Tennessee Press, 1987).

<sup>169</sup> See, Hans Kung, *A GLOBAL ETHIC FOR GLOBAL POLITICS AND ECONOMICS*, (New York: Oxford University Press, 1998), “Human Responsibility the Basis for Human Rights”, (National Catholic Reporter, Volume 35, No. 7, p. 15, December 11, 1998), and Jurgen Moltmann, *ON HUMAN DIGNITY*, translated from the German by W. Douglas Meeks, (Philadelphia: Fortress Press, 1984).

<sup>170</sup> George F. Lundy, *TOWARD A THEOLOGY OF HUMAN RIGHTS*, (Chicago: Loyola University Press, 1980). See also, David Hollenbach, *THE GLOBAL FACE OF PUBLIC FAITH: POLITICS, HUMAN RIGHTS, AND CHRISTIAN ETHICS*, (Washington, D.C.: Georgetown University Press, 2003), and David Little, John S. Nurser, and John Nurser, *FOR ALL PEOPLES AND NATIONS: THE ECUMENICAL CHURCH AND HUMAN RIGHTS* (Washington, D.C.: Georgetown University Press, 2005).

stolen or taken by extortion. He must make restitution in full, add a fifth to the value of it and give it to the [rightful] owner... Leviticus 6: 1-5.

...Zacchaeus stood up and said to the Lord, Look Lord! Here and now I give half of my possessions to the poor and if I have cheated anybody out of anything, I will pay back four times the amount. Jesus said to him 'Today salvation has come to this house... Luke 19: 6-9.

#### SUMMARY

This Resolution calls upon the Illinois Conference of the United Church of Christ, its Associations, its local churches, related agencies, to be educated about the historical evils of the slave trade and its legacy which is a pernicious and perpetuating distrust and fear that continues to feed the sin of racism and its fruits of inequality and injustice. It further call upon the Conference to take actions in support of reparations.<sup>171</sup>

Some of the clearest voices for human rights and social justice in the last forty years from both Catholic and Protestant theologians, ministers, and activists have come from those aligning themselves with various strands of “liberation theology”.<sup>172</sup> Representing the African-American strand as a preeminent scholar and leader is James H. Cone of Union Theological Seminary in New York City. Dr. Cone’s classic work is “*A Black Theology of Liberation*”, first published in 1970.<sup>173</sup> Writes Dr. Cone,

What is primary is that blacks must refuse to let whites define what is appropriate for the black community. Just as white slaveholders in the nineteenth century said that questioning slavery was an invasion of their property rights, so today they use the same line of reasoning in reference o black self-determination. But Nat Turner [slave rebellion leader] had no scruples on this issue; and blacks today are beginning to se themselves in a new image. We believe in the manifestation of the black Christ, and our encounter with him defines our values. This means that blacks are *free* to do what they have to affirm their humanity.<sup>174</sup>

### **III) Past Trends in Decisions and Conditioning Factors.**

#### **A) The Lessons of South Africa—and Beyond<sup>175</sup>.**

- **South Africa<sup>176</sup>.** In South Africa, a historic Truth and Reconciliation Commission (TRC) met for two and a half years to document as many

<sup>171</sup> Available at [www.millionsforreparations.com/theologicalresolution.html](http://www.millionsforreparations.com/theologicalresolution.html) (last visited May 5, 2005).

<sup>172</sup> See, e.g., Paulo Friere, *PEDAGOGY OF THE OPPRESSED*, (New York: Continuum, 1970, 2000).

<sup>173</sup> James H. Cone, *A BLACK THEOLOGY OF LIBERATION*, (1970) (Maryknoll, N.Y.: Orbis Books, 1996).

<sup>174</sup> *Id.*, pp.123-124.

<sup>175</sup> This section draws from Jon M. Van Dyke, “Reparations for the Descendants of American Slaves Under International Law”, in Winbush, *SHOULD AMERICA PAY?* at 66-72.

human rights abuses as could be investigated and to prepare a report that avoiding blaming. Many perpetrators who came forward and were truthful were granted pardons as part of the national healing effort. Some perpetrators were prosecuted. At least half of those pardoned were members of Nelson Mandela's African National Congress who had used violence in their attempts to take down apartheid. Out of more than 7,000 individuals who applied for amnesty, a little less than a thousand were granted. The government has been slow to award compensation to over 20,000 identified victims.<sup>177</sup>

- **Peru.** In 2001, Peru established a Truth Commission in regard to the killings and forced disappearances of some 29,000 Peruvians during the preceding twenty years. Significantly, the Commission was made up of two Catholic priests, one evangelical pastor, and six representatives of civil society. The mandate of the Commission was non-punitive, "to act with the purpose of purifying the national conscience, and to bring to light what was hidden".
- **Germany.** In 1952, the Federal Republic of Germany entered into an agreement with the state of Israel for a partial reparations payment of \$222 million. In 1990, Austria made direct payments totaling \$25 million to Jewish Holocaust survivors.

## **B) Previous U.S. Inter-Cultural Community and State Reconciliation Efforts.**

- Native Americans<sup>178</sup> and other Indigenous Peoples. Native Americans have received substantial, but very insufficient, "aid", rather than reparations for the genocide, displacement, treaty violations, and other breaches of human rights that they have experienced. The Alaska Claims Settlement of 1971 awarded one billion dollars and forty-four million acres to indigenous Alaskans whose rights had been violated.
- Japanese Internment. The Civil Liberties Act of 1988 authorized U.S. reparation payments to Japanese Americans interred during World War II. Each person received \$20,000 each.<sup>179</sup>

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<sup>176</sup> On the South African Truth and Reconciliation Commission experience, see, Aeyal M. Gross, "THE CONSTITUTION, RECONCILIATION, AND TRANSITIONAL JUSTICE: LESSONS FROM SOUTH AFRICA AND ISRAEL", 40 STAN. J. INT'L L. 47, (Winter, 2004); Rosemary Nagy, "Violence, Amnesty, and Transitional Law: 'Private Acts and 'Public Truth' in South Africa", 1 AFR. J. LEGAL STUD. 1 (May, 2004);

<sup>177</sup> See, Mary Burton, "Custodians of Memory: South Africa's Truth and Reconciliation Commission", 32 INT'L J. LEGAL INFO. 417, (Summer, 2004); Aeyal M. Gross, "The Constitution, Reconciliation, and Transitional Justice: Lessons from South Africa and Israel", 40 STAN. J. INT'L L. 47, (Winter, 2004); and Jeremy Sarkin, "Reparation for Past Wrongs: Using Domestic Courts Around the World, Especially the United States, to Pursue African Human Rights Claims", 32 INT'L J. LEGAL INFO. 426, (Summer, 2004).

<sup>178</sup> See, Mishael A. Danielson and Alexis Pimental, "Give Them Their Due: An African-American Reparations Program Based on the Native American Federal Aid Model", 10 WASH. & LEE RACE & ETHNIC ANC. L. J. 89, (Spring 2004).

<sup>179</sup> Civil Liberties Act of 1988; see, Chris K. Ijima, "Reparations and the 'Model Minority' Ideology of

- Recent attention to reparations has been accelerated by efforts to deal with the thousands of Jim Crow lynchings<sup>180</sup> and other racially motivated violence and murders in the early 1900s. One recent example is in Waco, Texas, which has been reexamining its shameful part in the lynching past of Central Texas that came to a head after the grisly 1916 castration, cutting, lynching, and burning of Jesse Washington, a 17 year old black farmhand.<sup>181</sup> On May 4, 2005, the FBI announced it was going to exhume the body of Emmett Till, the 14-year-old black boy from Chicago whose brutal killing in 1955 in Mississippi helped fuel the civil rights movement, to look for additional evidence that might result in prosecution. Over 22 cases of murders on the civil rights era have been reopened in the South since 1989, reports Andrew Blejwas<sup>182</sup>, a spokesperson of The Southern Poverty Law Center, a Montgomery, Alabama-based non-governmental organization (NGO) devoted to monitoring hate crimes and bringing civil litigation for damages and injunctions against perpetrators.<sup>183</sup>
- Tulsa, Oklahoma. Professor Charles Ogletree has explored the ability of reparations litigation to promote “interest convergence” between reparations advocates and the general public in his study of the 1921 Tulsa, Oklahoma race riots litigation.<sup>184</sup> Ogletree, citing the work of fellow Harvard Professor Derrick Bell, asserts that the Tulsa litigation and the energetically positive public response to it shows that when reparations can be pursued in the form of stories of victims and survivors in the context of civil rights hearings, greater headway is made in the reparations movement than by “top-down” legislation.<sup>185</sup>

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Acquiescence: The Necessity to Return to Original Humiliation”, *BOSTON COLLEGE LAW REVIEW* 40 (1998) at 1999.

<sup>180</sup> See, Sherrilyn A. Ifill, “Creating a Truth and Reconciliation Commission for Lynching”, 21 *LAW & INEQ.* 263 (2003). See also, Alfred L. Brophy, “Reparations Talk: The Tort Law Analogy and Reparations for Slavery”, 24 *B.C. THIRD WORLD L.J.* 81-138 (2004) (discussing reparations in the context of Jim Crow—citing a list of racially motivated crimes, including lynching).

<sup>181</sup> Ralph Blumenthal, “Fresh Outrage in Waco at Grisley Lynching of 1916”, *New York Times*, May 1, 2005, includes references to Patricia Bernstein, *THE FIRST WACO HORROR: THE LYNCHING OF JESSE WASHINGTON AND THE RISE OF THE N.A.A.C.P.*, (College Station: Texas A & M Press, 2005); and William D. Carrigan, *THE MAKING OF A LYNCHING CULTURE: VIOLENCE AND VIGILILANTISM IN CENTRAL YEXAS 1836-1916*, (Urbana: University of Illinois Press, 2004).

<sup>182</sup> As interviewed by Blumenthal, *Id.*

<sup>183</sup> Visit, <http://splcenter.org/index>

<sup>184</sup> Charles J. Ogletree, Jr., “Tulsa Reparations: The Survivors’ Story”, 24 *B. C. THIRD WORLD L. J.* 13(Winter, 2004). For complete accounts of the Tulsa Race Riots and the recent Commission and legislation, see, Tim Madigan, *THE BURNING: MASSACRE, DESTRUCTION, AND THE TULSA RACE RIOT OF 1921*, (New York: Thomas Dunne Books, 2001).

<sup>185</sup> *Id.* See also Derrick A. Bell, Jr., *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM*, (New York: Basic Books, 1992). The Tulsa litigation resulted in the 1921 Tulsa Race Riot Act of 2001, Okla. Sess. Law Serv. ch. 315 (West) (codified at Okla. Stat. Ann. Tit. 74, § 8000.1(3) (2002)). See Note , supra and Note , infra.

- Rosewood, Florida<sup>186</sup>. In 1995, nine former residents of Rosewood, a former all black town, were awarded \$150,000 each as restitution for property destroyed in 1923 white persecution and violence.<sup>187</sup>

#### **IV) Projection of Future Trends.**

##### **A) A Lamentable Legacy will continue unabated if positive efforts do not combat it.**

1. A report by Stephanie Simon from St. Louis, Missouri published February 14, 2005 in The Miami Herald demonstrates that far from being behind us, racism and the uglier irrational and hateful legacies of slavery and Jim crow are very much still with us—even growing:

White supremacist groups around the country are moving aggressively to recruit new members by promoting their violent, racist ideologies on billboards, in radio commercials and in leaflets tossed onto suburban driveways.

Watching with mounting alarm, civil rights monitors say these tactics stake out a much bolder, more public role for many hate groups, which are trying to shed their image as shadowy extremists and claim more mainstream support.<sup>188</sup>

2. **Opposition to Affirmative Action.**<sup>189</sup> The conservative direction that the United States has traveled beginning with the 1980s Reagan administrations has resulted in a overall resistance to further advances of the gains begun in the earlier civil rights era, visibly evidence by the opposition in so many quarters to continuation or expansion of affirmative action remedies designed, so to speak, to go beyond making the rules of the game fair to correcting the score. Many fine scholars and cultural observers have written

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<sup>186</sup> See, Michael D’Orso, *LIKE JUDGMENT DAY: THE RUIN AND REDEMPTION OF A TOWN CALLED ROSEWOOD*, (New York: Putnam Publishing, 1996).

<sup>187</sup> Cited in a chapter entitled “‘A Day of Reckoning’: Dreams of Reparations”, in *FREEDOM DREAMS: THE BLACK RADICAL IMAGINATION*, (Boston: Beacon Press, 2002), at 113-114.

<sup>188</sup> Stephanie Simon, “Hate Groups Widen Message”, published in The Miami Herald, Feb. 14, 2005. Mark Potok of the Southern Poverty Law Center was interviewed for the article. One of the hate-groups cited was The National Alliance, which has been very active, Simon says, and is calling for eliminating minorities from America.

<sup>189</sup> See, Faye Crosby, *AFFIRMATIVE ACTION IS DEAD; LONG LIVE AFFIRMATIVE ACTION*, (New Haven: Yale, 2004). Also note: Although in the Supreme Court case of *Grutter v. Bollinger*, 539 U.S. \_\_\_ (Docket No. 02-241) (2003), the specific form of affirmative action plan utilized by the University of Michigan was upheld, it was on the narrowest of grounds—the University successfully demonstrated that its plan was not a quota system and that there was an educational purpose for the diversity the plan sought to establish.

about the assault on positive efforts to transfer power to African-Americans—such writers as Faye Crosby<sup>190</sup>, Kenneth B. Nunn<sup>191</sup>, and Jordan Paust<sup>192</sup>. They help us realize that the many success stories of African-Americans economically overcoming the legacy of slavery and Jin Crow do not in any way minimize the overall relative deficit and oppressiveness that still greets blacks who are born in the USA.

## **B) The Movement Will Continue to Grow.**

In 2000, Chicago became the fifth American city to endorse the call for a national slavery reparations commission<sup>193</sup>. In 2001, California’s legislature joined in the call, the first state to do so<sup>194</sup>. Also in 2000, the American Bar Association’s Section of Individual Rights and Responsibilities issued a human rights position paper written by Anthony Gifford citing seven legal propositions in support of the movement for reparations<sup>195</sup>, representing the growing mainstream legal support for a reparations process. Those propositions are:

1. The enslavement of Africans was a crime against humanity.
2. International law recognizes that those who commit crimes against humanity must make reparation to victims.
3. There is no legal barrier preventing the claim of reparations.
4. The claim would be brought on behalf of all Africans, in Africa and the Diaspora, through an appropriate representative body.

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<sup>190</sup> *Id.*

<sup>191</sup> Kenneth B. Nunn, “Rights Held Hostage: Race, Ideology, and the Preemptory Challenge”, 28 HARV. C.R.C.L. L. Rev. 63 (1993) (Positing that “colorblindness” or trying to ignore skin color or “race” renders it ‘impossible to remedy pre-existing discrimination”, *id.* at 76.

<sup>192</sup> Jordan J. Paust, “Race-Based Affirmative Action and International Law”, 18 MICH. J. INT’L. L. 659 (1997).

<sup>193</sup> “State of California Calls For National Action on Slavery Reparations, JET, July 30, 2001, at 21 (noting that California was joining Chicago, Detroit, Dallas, and Cleveland in so doing).

<sup>194</sup> *Id.*

<sup>195</sup> Anthony Gifford, “The Legal Basis of the Claim for Slavery Reparations”, American Bar Association Section of Individual Rights and Responsibilities, available at <http://www.abanet.org/irr/hr/spring00humanrights/gifford.html> (last visited May 8, 2005).

5. Claims would be brought against the governments of those countries that promoted and were enriched by the slave trade, legitimized the institution of slavery, and profited as a result.
6. The claim should be assessed by experts in each aspect of life and in each region affected by the institution of slavery.
7. The claim, if not settled, would ultimately be determined by a special international tribunal recognized by all parties.

**C) Legislation for the short-term will get lost in the shuffle and litigation will hammer away.**

As the United States seems to intensively and expensively wander its way through a “war on terror” that itself has raised very serious human rights concerns and deal with political domestic issues like Social Security, there seems to be little national leadership for overarching and deeply considered vision at the current time for dealing with the legacy of slavery or continuing racial issues. In fact, with the backlash on immigration and the difficulties that people of foreign origin, especially those of darker skin and different religions, have faced in these days of purported “Homeland Security”, concerns have risen about our culture’s respect for diversity and our ability to deal positively with cultural and “racial” differences.

In this environment, legislation directed at reparations does not have good prospects in the short-term. I hope it does not require a domestic “racial” crisis (like the Rodney King riots in Los Angeles in 1991, for instance) to direct the attention of our nation’s leaders to this issue that simmers, as we have seen, just below the immediate surface. The truth, however, is that something powerful is required—whether (a) successful major lawsuit(s), or powerful demonstration(s) of persuasive concern by a coalition of Whites and Blacks, including organized action, which may include strategic civil disobedience, or a spontaneous event that draws the nation’s attention in a determined way to once and

for all deal with the legacy of enslaving and oppressing blacks in this country. I believe it is therefore wise to prepare the way by an intentional plan that can realistically place the nation in position to be proactive, not merely reactive.

#### **V) Alternatives and Recommendations.**

**A) The Movement.** The reparations movement, to be successful, must move forward on four fronts: academic, professional, civic, and religious.

To date, the public leaders of the reparation movement have been predominately African-American individuals and organizations. It is time for Whites to take the lead—to accept responsibility for the legacy of slavery. In my judgment, this is perhaps the single greatest impediment to the integrity and the success of the efforts to achieve justice and reconciliation on this issue. It is time for White representatives in the House and Senate, especially from districts and states where slavery and Jim Crow were most entrenched and defended, and where the worst atrocities occurred, to exhibit the kind of courageous, historic leadership that could well help usher the United States into a new era of liberty.

#### **B) Litigation: Keeping the Feet to the Fire.**

It is sadly amazing to me that White supremacy has been so effective in institutionalizing itself that its legal system has true enough been shown thus far virtually immune from having to hold its benefactors accountable for the continuing legacy of slavery. Some cases will proceed on what traditionalists will call “shaky ground”. The stark reality, however, is that the real “shaky ground” is what White supremacist America is built on and it most certainly will quake eventually if restorative justice is not undertaken to deal with the fissures so many would sooner ignore.

**C) Legislation: The Penultimate Goal.**

I think it is clear that though litigation may help publicize and force the issue onto the national agenda, for the technical reasons we have examined, litigation should not be the primary strategy for change in the reparations status quo. The system is adversarial, and by its nature has not the tools for the deep and broad healing that is needed. Though, as *Brown v. Board* woke a nation up from a drunken slumber of injustice in 1954—opening a door of opportunity that could not be closed, so too the right series of lawsuits could again be the solicitor that catalyses other cultural developments to reach a tipping point for change.

**D) Proposal: The “U.S. Slavery Justice and Reconciliation Commission” (USSJRC).**

I suggest first that we consider articulating a new name for the reparations movement. As we have seen “reparations” is certainly accurate for what is owed, but it has connotations that are unnecessarily politically obstructionist. As we have looked at the holistic, non-punitive approach of the Restorative Justice movement in the context of human rights promotion and protection, I suggest three alternatives: the **“Restoration Movement”**, the **“Restitution Movement”**, the **“Second Reconstruction Movement — restoring the fundamental integrity of the United States and restoring what has been taken from proud and beautiful peoples: African Americans, and Africans. Payments made as part of a Restoration Plan, or Restoration, Restitution, or Second Reconstruction Contract could then be referred to and discussed as “Restoration, Restitution or Reconstruction Funds or Transfers” or perhaps simply as “Restitution for Reconstruction”.**

Secondly, I propose that we modify the groundbreaking proposal that heroic

Congressman John Conyers has been submitting annually to a disappointingly unresponsive Congress. Rather than a seven person Commission to study the issue and make recommendations, I suggest that a visionary and comprehensive plan be prepared that calls for a series of regional roundtables corresponding to federal judicial districts around the country, under the supervision of a an executive bipartisan commission of twelve experts (from law, social sciences, and economics).

This Commission would be called “The U.S. Slavery Justice and Reconciliation Commission”, and be appointed by a newly formed bipartisan select joint sub-committee on reparations, formed from members of the House and Senate Judiciary Committees. The regional roundtables would be convened by a Convener from that district, who would be appointed by the executive Commission, who would in turn hire a full time facilitator, with appropriate staffing. The Convener would select and invite, with the advice and consent of the executive committee, no less than 30 and no more than 75 (depending on the population, history and complexity of that district) representatives and spokespersons of the most relevant stakeholders and organizations to serve as members of the roundtable.

With the leadership of each District’s Convener and Facilitator, each Roundtable would then conduct investigations, do research, hold hearings, and most importantly, conduct a series of open community forums throughout their district to effectively solicit testimony from the public regarding the legacy of slavery, Jim Crow, discrimination, and to receive suggestions and identify resources toward finding solutions that could be incorporated into a restorative justice report and plan on combating the legacy of slavery. Each Convener would prepare a full report to the executive Commission, which in turn

would prepare a plan, including legislative recommendations, to submit to the joint select committee on reparations. This plan could be called ***“America’s 21<sup>st</sup> Century Contract with Africa and African Americans”***.

Each Convener’s office would take responsibility for following through on worthy action plans of their reports that could be accomplished at the local or district level without further congressional action. The process would conclude with a consecrating and celebrative Convention to be held in Washington, D. C. where “America’s 21<sup>st</sup> Century Covenant with Africa and African-Americans” would be announced.

I propose thirdly that this Commission and Legislative restorative justice process be tied to the 400 year anniversary of the tragic commencement of slavery in the United States. Slavery here began in Jamestown, Virginia in 1619. Thus, I suggest the ten year payment of reparations end that year—requiring the first transfers to be in 2009. This provides three years or so to organize and conduct a grass roots campaign to set the stage and build the necessary popular and political involvement and support.

Lastly, I propose that Congress enact legislation independent of or in conjunction with the USSJRC process that eliminates on realistic public policy and human rights grounds that eliminates at least these three technical procedural issues that have been sources of contention and delay as identified by Adjoa Aiyetoro and others: standing, statutes of limitation, and sovereign immunity<sup>196</sup>.

It is time to begin preparing decision makers and the public to think about these kinds of specifics. There is simply no question that in the end, because of its scope, reparations, restoration, or reconstruction is a more socio-economic--political issue than

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<sup>196</sup> Aiyetoro, “Formulating Reparations”, *supra*, Note .

legal. Included must be proposals on the amounts of compensation to consider as part of an overall plan. What is it going to take? Proposals have been all over the map, reaching as high as scores of trillions of dollars. As we look at the Federal budget (2.2 trillion for FY 2006)<sup>197</sup>, as we look at the amounts we have spent on other projects, as we look at what we have asked, let's say, the tobacco defendants to pay in compensation (over \$200 billion)<sup>198</sup>, we quickly begin to see that we are only limited by will and creativity. We can do this.

As I think about adequate **Reconstruction** funds, here is what I arrive at, transferring from the United States to African-American and Africans, the following:

**1) USA: 500 Billion (10 years):**

- Education
- Historical and Cultural Foundation Support
- Community Infrastructure
- Health Care
- Legal Assistance
- Law Enforcement training
- Child Care
- Family Support and Life Skills Training
- Economic Development
- Housing Investment
- Social Security Supplement

**2) Africa: 500 Billion (10 years)**

The same basic categories should be addressed with different percentages of the total sum assigned.

**3) National Slavery Memorial(s) and Museums: 1 Billion**

**4) USSJRC Process and Administration: 500 million.**

**E) A Special Strategic Opportunity for Those Willing to Step Forward.**

Here I would like to make a case in point: consider, for instance, my home state of Kansas. In the decade prior to the start of the Civil War, the State was known as

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<sup>197</sup> Available at <http://whitehouse.gov/omb/budget/fy2006/>

<sup>198</sup> See, [http://www.oag.state.ny.us/press/2000/dec/dec28a\\_00.html](http://www.oag.state.ny.us/press/2000/dec/dec28a_00.html) (last visited May 9, 2005).

“Bleeding Kansas” because of the violent aftermath to the Kansas-Nebraska Act of 1854, which basically opened up Kansas to the most adventuresome and committed abolitionists and proslavery forces<sup>199</sup>. The deal was: whoever can settle Kansas and win a popular vote on the issue of slavery wins. So the battle was on. There was a series of competing governments as a result in the fledgling Territory until, thanks to John Brown<sup>200</sup> and other less violent leaders, and an influx of abolitionist settlers from New England, Kansas went into the Union as a Free State in 1861. Lawrence, Kansas was the center of the battle over slavery that eventually led to Harper’s Ferry, Charleston, South Carolina, and the start of the Civil War, which eventually became a war over the slavery question. The Emancipation Proclamation of 1863 was a direct consequence.

My point is this: Consistent with the observations contained in the recent best-seller “*What’s the Matter With Kansas*”<sup>201</sup> that Kansas, which was once such a progressive state, has against its own interests become regressively conservative, why shouldn’t Kansas, especially Northeastern Kansas, take the lead as it did in the heat of slavery and raise the banner of justice once again, of freedom, and push forward by example and assertion the great and historic cause of the *abolition of the legacy of slavery*, a progressive issue conservatives and liberals, especially in middle states like Kansas, should be able to work together on. The capital of Kansas, Topeka, where slaves fleeing Tennessee—called Exodusters<sup>202</sup>—settled after Reconstruction, was the locale of the epic

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<sup>199</sup> See, Nicole Etcheson, BLEEDING KANSAS: CONTESTED LIBERTY IN THE CIVIL WAR ERA, (Lawrence, Kansas: University of Kansas Press, 2004).

<sup>200</sup> See, David S. Reynolds, JOHN BROWN, ABOLITIONIST: THE MAN WHO KILLED SLAVERY, SPARKED THE CIVIL WAR, AND SEEDED CIVIL RIGHTS, (New York: Knopf, 2005).

<sup>201</sup> Thomas Frank, WHAT’S THE MATTER WITH KANSAS: HOW CONSERVATIVES WON THE HEART OF KANSAS, (New York: Metropolitan Books, 2004).

<sup>202</sup> See, Nell Irvin Painter, EXODUSTERS: BLACK MIGRATION TO KANSAS AFTER RECONSTRUCTION, THE FIRST MAJOR MIGRATION TO THE NORTH OF EX-SLAVES, (1976, 1986) (New York: W. W. Norton, 1992).

*Brown v. Board of Education* case in 1954 that sounded the death knell of segregation<sup>203</sup>.

The historic lineage is there and waiting.

Washburn Law School of Topeka (my alma mater) and the University of Kansas Law School in Kansas have a common link, a shared inheritance and calling—why not establish a **Center to End the Legacy of Slavery (CELS)** to fight the cancer of slavery’s legacy and to aid, even coordinate, efforts combating modern day slavery which we call human trafficking?

Other states have opportunities also. States like Ohio, Massachusetts, and New York were among the great Underground Railroad<sup>204</sup> states. Should they not continue the great work? And wouldn’t it be incredibly beautiful—and powerful—for states in the heart of the South to step forward with the “balm of Gilead”?

### **Conclusion.**

The wealthiest nation in the world was built on the backs, with the sweat, blood, and tears of enslaved African-Americans. “Holocaust” begins to describe what the slave-trade did to Africa. “Apartheid” captures part of the horror of the legacy of slavery in the United States. The moral, legal, and political foundation has been established to finally do what has been needed and promised since the end of the Civil War, to return to the

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<sup>203</sup> *Brown v. Board of Education*, 347 U.S. 483 (1954). Topeka, Kansas is the present author’s hometown and his fifth grade teacher, Lucinda Todd, was the initiating and organizing plaintiff in the *Brown* case. See Michael F. Blevins, “Remembering Mrs. Todd”, *BROWN [Foundation] QUARTERLY*, Vol. 6, No. 2, May 2004 (published in commemoration of the 50<sup>th</sup> anniversary of the landmark *Brown* decision), available at <http://brownvboard.org/brwnqurt/06-2/index4.php> (last visited May 5, 2005). The story of the *Brown* decision is best told in Richard Kluger’s 1975 classic, *SIMPLE JUSTICE: THE HISTORY OF BROWN v. BOARD OF EDUCATION AND BLACK AMERICA’S STRUGGLE FOR EQUALITY*, (New York: Vintage Books, 2004).

<sup>204</sup> See, David W. Blight, ed. *PASSAGES TO FREEDOM: THE UNDERGROUND RAILROAD IN HISTORY AND MEMORY*, (Washington, D.C.: Smithsonian Books, 2001), and Fergus M. Bordewich, *BOUND FOR CANAAN: THE UNDERGROUND RAILROAD AND THE WAR FOR THE SOUL OF AMERICA*, (San Francisco: HarperCollins Publishers, 2005). See also, Catherine Clinton, *HARRIET TUBMAN: THE ROAD TO FREEDOM*, (New York: Little, Brown & Company, 2004).

African-American culture and community what is justly theirs: the fruit of their labor, the balm for their wounds, and the promise of a just future. In addition to what the Supreme Court has called “immutable principles of justice”, the graves of the enslaved and murdered join the voices of the yet oppressed and freedom and justice lovers everywhere: Recover your own dignity and pride: Tell the truth, acknowledge the pain, return the wealth, and heal the land: end the scourge of white supremacy. Make “protecting human rights” more than a slogan. Empower the oppressed. Correct the score. Through true democracy, let us make the world safe. Do not fall back on tired denials and legalistic, short-sighted defenses. Let us regain our moral integrity and once again become a beacon of profoundest hope, pointing the way to Martin Luther King’s powerfully beautiful and articulated vision of a national and global “beloved community” which lay just beyond a fear-darkened horizon. The United States, in the midst of troubled times, may yet become a true shining lamp of liberty that no memory, no enemy, no toxic legacy can darken or defeat.

*The history of America has yet to be told.  
The work remains to be done...  
All I can say to you is to  
urge you to get busy digging  
into the rich soil,  
and to wish you luck.  
The story of America  
needs desperately to be told,  
and at the center of that story  
you will find the African-American.  
—Ossie Davis<sup>205</sup>*

*“Serious diseases require great remedies”*

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<sup>205</sup> As told to and quoted by Sharon D. Johnson (interview dated January 26, 2005, just eight days before Ossie Davis’ death in Miami, Florida, “The Word Workers”, BLACK ISSUES BOOK REVIEW, May-June 2005, pp. 22-26, at 26.

—Haitian Proverb

*“...and what does the Lord require of you?— but to do justice,  
love kindness, and walk humbly with your God.”*  
—Micah 6:7-8

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### **Selected Web Resources**

[www.afre-ngo.org](http://www.afre-ngo.org)

[www.africana.com](http://www.africana.com)

[www.ar-africare.com](http://www.ar-africare.com)

[www.egroups.com/group/reparations](http://www.egroups.com/group/reparations)

[www.freetheslaves.net](http://www.freetheslaves.net)

[www.justicetalking.org/season\\_two\\_shows/reparations.html](http://www.justicetalking.org/season_two_shows/reparations.html)

[www.millionsforreparations.com](http://www.millionsforreparations.com)

[www.nbufront.org](http://www.nbufront.org)

[www.ncobra.com](http://www.ncobra.com)

[www.ReparationsTheCURE.org](http://www.ReparationsTheCURE.org)

[www.splcenter.org](http://www.splcenter.org)

[www.the.arc.co.uk/arm/](http://www.the.arc.co.uk/arm/)

[www.transafricaforum.org](http://www.transafricaforum.org)

[www.ubuntu.tv/](http://www.ubuntu.tv/)