

# Why the Reparations Movement Should Fail

Gregory Kane

Follow this and additional works at: <http://digitalcommons.law.umaryland.edu/rrgc>



Part of the [Civil Rights and Discrimination Commons](#), and the [Constitutional Law Commons](#)

---

## Recommended Citation

Gregory Kane, *Why the Reparations Movement Should Fail*, 3 U. Md. L.J. Race Relig. Gender & Class 189 (2003).  
Available at: <http://digitalcommons.law.umaryland.edu/rrgc/vol3/iss1/7>

This Notes & Comments is brought to you for free and open access by DigitalCommons@UM Carey Law. It has been accepted for inclusion in University of Maryland Law Journal of Race, Religion, Gender and Class by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact [smccarty@law.umaryland.edu](mailto:smccarty@law.umaryland.edu).

## COMMENT

### WHY THE REPARATIONS MOVEMENT SHOULD FAIL

GREGORY KANE\*

#### I. INTRODUCTION

In 1865, the abolition of slavery began a new chapter in our country's history.<sup>1</sup> Nearly 140 years later, the controversy over slavery continues as many claim that African-Americans are owed a debt because of slavery's negative effects.<sup>2</sup> These claims have flourished in the form of reparations not only for the benefit of descendants of slaves, but for most black Americans. Those supporting reparations for slavery seek various forms of compensation, including cash payments, government subsidized programs, and a commission to study the effects of slavery.<sup>3</sup>

In relying on the history of slavery, "they owe us" has become a veritable mantra of the reparations movement. "They" would be those terrible Caucasians, who benefited from slavery at the expense of enslaved Blacks.<sup>4</sup> However, reparationists do not acknowledge the individual citizens, including some founding fathers, who placed their liberty on the line time and again to rescue fugitive slaves.<sup>5</sup> Northern

---

\* Gregory Kane is a Baltimore Sun Columnist who's won several writing awards. He and Sun Reporter Gil Lewthwaite were Pulitzer finalists in 1997 after writing a series of articles about slavery in the Sudan. This Comment is a collaboration between Mr. Kane and MARGINS staffer Tina Hixon, who edited his work and added some cogent ideas of her own. Mr. Kane thanks both Ms. Hixon and MARGINS for their help.

1. PHILIP A. KLINKNER & ROGER M. SMITH, *THE UNSTEADY MARCH: THE RISE AND DECLINE OF RACIAL EQUALITY IN AMERICA* 50 (1999).

2. See *PetitionOnline.com*, *Reparations for Africans*, at [petitiononline.com/slavery\\_reparations](http://petitiononline.com/slavery_reparations) (on file with MARGINS: Maryland's Law Journal on Race, Religion, Gender and Class) (last visited Feb. 25, 2003).

3. *Id.*; See also H.R. 40, 108th Cong., 1st Sess. 2003 (introduced by Congressman John Conyers, calling for a commission to study slavery in the United States).

4. RANDALL ROBINSON, *THE DEBT: WHAT AMERICAN OWES TO BLACKS* 8 (First Plume Printing 2001) (2000).

5. What about Richard Winsor, Simeon Bushnell, David Watson, William E. Lincoln, Charles Langston, or Wilson Bruce Evans? In September of 1858, three men kidnapped John Price, an escaped slave, in Oberlin, Ohio and held him to be returned to the South. The white men named above, along with thirty-one others, rescued Price from captivity. Four years earlier, a deputy U.S. Marshal and Missouri slaveowner, Benjamin S. Garland, broke into Joshua Glover's Wisconsin home and carted him off to a Milwaukee jail. Glover was a slave who had escaped Garland's clutches. Angry residents of the Badger State held a meeting during which they called the Fugitive Slave law "disgraceful" and called for its repeal. Then

states enacted “personal liberty laws” after the passage of the Fugitive Slave Act<sup>6</sup> to guarantee habeas corpus protections for black citizens.<sup>7</sup> Those people and their descendants are included in the “they” against whom reparationists rail. The actions of your ancestors, reparationists argue, are not good enough. Chicago Alderman Dorothy Tillman was quoted as saying:

America is one of the cruelest nations in the world when it comes to black folks. America owes us a debt and we intend to collect. The white ruling class accumulated enormous wealth from slavery, either directly or indirectly. Virtually every white person in America reaped some benefits by either owning slaves, investing in the slave industry, or purchasing slave produced products. Meanwhile, blacks received absolutely nothing.<sup>8</sup>

No matter how cogent the arguments against reparations, no matter how fervently opponents plead that proponents suggest a solution as unjust as slavery, opponents are met with the same refrain. Blacks are owed a debt based upon slavery, which ended over a century ago. This paper examines the reparations claim and suggests that the movement should fail.

Part II of this comment provides a brief history of slavery in the United States and the history of the reparations movement. Part III argues that paying reparations cannot repair the past injustices of

---

one hundred of them descended on the jail and freed Glover. Sherman Booth, a Wisconsin abolitionist who edited an anti-slavery newspaper, was indicted along with several others for violating the Fugitive Slave Law. *THE OXFORD GUIDE TO UNITED STATES SUPREME COURT DECISIONS 2-3* (Kermit L. Hall ed., 1999). The Wisconsin Supreme Court and the Supreme Court then engaged in an imbroglio. Anti-slavery Wisconsinites sought a state writ of habeas corpus for Booth and the other defendants to free them from federal custody. When the Supreme Court continued to rule that Booth and his cohorts were legally held in federal custody, the Wisconsin legislature condemned the high court’s “despotism” and called for “positive defiance” by the states. *Id.*

6. Fugitive Slave Act of 1850, 31st Cong., 1<sup>st</sup> Sess. ch. 60 (repealed 1864).

7. In 1859, Ohio Governor Salmon P. Chase, who had some anti-slavery sympathies of his own, became embroiled in the abolition crisis. The State of Kentucky indicted Willis Lago, a free black man in Ohio, for theft when he helped a slave named Charlotte to escape. Kentucky Governor Beriah Magoffin demanded that Chase extradite Lago. Chase refused and William Dennison took over as Ohio governor after Chase left office. Magoffin made the same demand and was rebuffed a second time. *THE OXFORD GUIDE TO UNITED STATES SUPREME COURT DECISIONS*, *supra* note 5, at 149.

8. DAVID HOROWITZ, *UNCIVIL WARS: THE CONTROVERSY OVER REPARATIONS FOR SLAVERY* 10 (2002).

slavery. Part IV argues that reparations cannot alleviate the problems facing Blacks today; rather the advocates should focus on self-reliance and building a strong economic base.

## II. HISTORY OF SLAVERY AND ITS IMPACT ON THE REPARATIONS MOVEMENT

### *A. Slavery in the United States*

The first Africans came to the United States in 1619 to Jamestown Harbor, Virginia.<sup>9</sup> These Africans came not as slaves but as indentured servants.<sup>10</sup> Initially, black and white servants were required to perform labor for a specified period of time and the servants were treated relatively the same.<sup>11</sup> Some black servants gained their freedom and acquired land.<sup>12</sup> However, by 1640, the status of black indentured servants drastically changed and they became lifetime slaves.<sup>13</sup> By the 1700's slavery was institutionalized and widespread throughout the American colonies.<sup>14</sup> Prior to the civil war there were approximately four million slaves in America,<sup>15</sup> Some scholars estimate that there were between eight and twelve million slaves over the course of slavery in America.<sup>16</sup> Slavery, however, was met with resistance by small factions of people, including the slaves themselves.<sup>17</sup>

With the onset of the Revolutionary War, slavery showed its first signs of collapse.<sup>18</sup> Many slaves fled their masters during the war, while others joined the army to fight for this country's independence.<sup>19</sup> As a result of slaves fleeing and the growing sentiment against slavery among the colonies, white Americans ended slavery in the North immediately after the war.<sup>20</sup> Over the next century, a strong tension built between the states that abolished slavery and those that

---

9. KLINKNER, *supra* note 1, at 11.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* at 11-12.

14. *Id.* at 12.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.* at 19-20.

20. *Id.* at 20.

vigorously fought to maintain slavery.<sup>21</sup> This tension ultimately led to the Civil War and the abolition of slavery in the United States.<sup>22</sup> Frederick Douglass, the incomparable African-American abolitionist<sup>23</sup> conceded that even some of those founding father slaveholders, much maligned by reparation supporters, foresaw the demise of slavery.<sup>24</sup> Speaking to the Rochester Ladies' Anti-Slavery Society in January of 1855, Douglass said:

The patriots of the American Revolution clearly saw, and with all their inconsistency, they had the grace to confess the abhorrent character of slavery, and to hopefully predict its overthrow and complete extirpation. Washington, and Jefferson, Patrick Henry, and Luther Martin, Franklin, and Adams, Madison, and Monroe, and a host of the earlier statesmen, jurists, scholars, and divines of the country, were among those who looked forward to this happy consummation.<sup>25</sup>

Slavery ended in 1865 with the ratification of the Thirteenth Amendment.<sup>26</sup>

Since the time of the Constitution's ratification abolishing slavery, reparations supporters have used slavery to try to guilt Americans into paying for the mistakes of their ancestors. However, these supporters fail to acknowledge the significant role Africans played in the trans-Atlantic slave trade.<sup>27</sup> It was primarily the Africans who waged war on and kidnapped their brethren and sold them to Europeans and Arabs.<sup>28</sup> Despite evidence to the contrary, reparations proponents claim that African participation was minimal and that

---

21. *See generally id.* at 21-46.

22. *Id.* at 47-71.

23. Douglass was also an accomplished orator, writer, newspaper publisher and diplomat. 2 THE LIFE AND WRITINGS OF FREDERICK DOUGLASS 337 (Philip S. Foner ed., Int'l Publishers 1975) (1950).

24. *Id.*

25. *Id.*

26. KLINKNER, *supra* note 1, at 50. *See also* U.S. CONST. amend. XIII, stating: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." *Id.*

27. RONALD SEGAL, FARRER, STRAUS & GIROUD, ISLAM'S BLACK SLAVES: THE OTHER BLACK DIASPORA 151 (2001); *see generally* HUGH THOMAS, THE SLAVE TRADE (1970), for a discussion of the role Africans played in the slave trade.

28. SEGAL, *supra* note 27, at 151.

enslavement of Africans by other Africans and Arabs was not as harsh as the slavery Africans faced in the New World.<sup>29</sup>

The wealth of evidence refuting the puerile assertion of “minimal” African involvement in trade is so compelling it is hard to know where to begin. Arabs enslaved Africans, subjecting them to the harsh plantation slavery that existed in the Western hemisphere.<sup>30</sup> While the institution of slavery in Arab and African societies did guarantee slaves more rights and freedoms than they had in the West, the process of enslavement itself was just as murderous and genocidal as the trip of Africans across the Middle passage.<sup>31</sup>

Is it any wonder then why reparatationists continue to rant about the 2001 U.N. Conference on Racism in Durban, South Africa, which, they claim, pronounced slavery and the trans-Atlantic “crimes against humanity?”<sup>32</sup> The Arab-African slave trade gets no similar condemnation from reparations advocates. Were Africans more merciful in raiding, hunting down and peddling the flesh of their racial kin? Will reparations advocates ever demand reparations for slavery from Arab and African countries? Will they dare say the Arab-African slave trade was a “crime against humanity? It is funny how Africans

29. Panel discussion on Reparations, Queens, N.Y. (Oct. 2002).

30. SEGAL, *supra* note 27, at 41-43. The slaves dug ditches, drained marshland and cultivated sugar and cotton plantations. The female slaves were also concubines. The slaves lived in camps that held between 500-5000 slaves. *Id.*

31. The Egyptian government established large enclosures for the collection of slaves, where the conditions caused many to die from smallpox and other diseases. Survivors faced additional trials. It was estimated that for every ten slaves who reached Cairo, fifty had died along the way. The impact on the catchment areas could be calamitous.

*Id.* at 151.

Continual raiding for slaves in Bahr El-Ghazal had so depleted the Bari people that the effects would still be evident in the 1920's. Captain McMurdo, who became director of Egypt's Anti-Slave Trade Department in 1900 and extended its writ to Sudan, visited the district bordering Ethiopia in 1902 and estimated that, as a result of so much raiding mainly for female slaves, the male to female ratio was now seven to one.

*Id.* at 153.

Natives of India who have resided many years in Kilwa . . . state that districts near Kilwa . . . , which a few years ago were thickly populated, are now entirely uninhabited. . . . Frequently, slaves who could not keep up with the pace of the caravan were left to die of starvation or were summarily shot. Routes favored by slave traders could easily be identified by the skeletons that were visible at intervals alongside the track. [It was] 'estimated that four or five lives were lost for every slave delivered safe at Zanzibar.' The price paid for every living slave was at least ten dead.

*Id.* at 156-57, 159.

32. REPORT OF THE WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE REPORT #A/CONF.189/12, *available at* [www.unhchr.ch.html/racism/](http://www.unhchr.ch.html/racism/).

enslaved by either Arabs or other Africans somehow become non-Africans for the purpose of justifying reparation claims against the United States.

It is worth noting that European countries, another target of reparationists, ended the slave trade early in the nineteenth century and slavery itself by the middle of the century.<sup>33</sup> Only Brazil and Cuba waited until the late nineteenth century to end slavery.<sup>34</sup> If reparations supporters were strategic, and if their goal was not simply to penalize the alleged descendents of white slaveowners, they would demand reparations from African and Arab countries as well. Then, at least, they would not appear hypocritical. True, most African countries are poor and could not pay much. But even if they paid a token amount, reparations advocates could then say to America, if these poor African countries can pay reparations, why can't you?

### *B. Historical Developments of the Reparations Movement*

The reparations movement can be traced directly to William Tecumseh Sherman, a general in the Union army during the Civil War who, through his Special Field Order No. 15,<sup>35</sup> all but started the reparations controversy that rages today.<sup>36</sup> Sherman set aside land on the Sea Islands, located off the coast of Georgia and South Carolina, for settlement by freed slaves who were "made free by the acts of war and the proclamation of the President of the United States."<sup>37</sup> The order specified that each black family was to receive "not more than forty acres of tillable ground."<sup>38</sup> Thus the fantasy that the U.S. government owes reparations to every black American living today was born.

Two years after Sherman's order, Republican Representative Thaddeus Stevens of Pennsylvania introduced a bill in Congress proposing that all public lands in the former confederate states be seized by the federal government.<sup>39</sup> The Congressman detailed in section four of his resolution:

---

33. THOMAS, *supra* note 27, at 563.

34. *Id.* at 566-68.

35. Major General William T. Sherman, Special Field Order No. 15 (Jan. 16, 1865), reprinted in SHOULD AMERICA PAY? SLAVERY AND THE RAGING DEBATE OVER REPARATIONS 321 (Raymond A. Winbush ed., 2003) [hereinafter SHOULD AMERICA PAY?].

36. *Id.*

37. *Id.*

38. *Id.* at 321-23.

39. H.R. 29, 40th Cong., 1st Sess. 1867, reprinted in SHOULD AMERICA PAY?, *supra* note 35, at 324.

The slaves who have been liberated by the operations of the war and the amendment of the Constitution or otherwise, who resided in said 'confederate States' on the 4<sup>th</sup> day of March, A.D. 1861, or since, shall have distributed to them as follows, namely: to each male person who is the head of a family, forty acres; to each adult male, whether the head of a family or not, forth acres; to each widow who is the head of a family, forty acres . . . .<sup>40</sup>

Through the years, black legend turned forty acres into "forty acres and a mule," and a military measure along with a Congressional resolution into a government promise of reparations to all Blacks.<sup>41</sup>

However, a careful reading of the language in both Sherman's order and Stevens' resolution shows that the claim that all Blacks are owed reparations is based upon faulty logic. Both Sherman and Stevens referred to slaves who lived in the Confederate states and were freed by war or Congressional measures.<sup>42</sup> This would mean that free Blacks in the North, slave and free Blacks within the Border States and free Blacks in the Confederacy were not included.<sup>43</sup>

In 1865, the Freedman's Bureau Act created the Bureau of Freedman's Affairs, which authorized land confiscated from Civil War rebels to be sold and leased to ex-slaves.<sup>44</sup> The Act was reauthorized to deal with issues of racial discrimination against Blacks and education; however, the mandate for the Act expired in 1870.<sup>45</sup> Since that time the movement has failed to secure reparations for Blacks.

The current movement for reparations was revived as a result of the Civil Liberties Act of 1988,<sup>46</sup> which apologized to the American citizens of Japanese descent who were held in internment camps during World War II.<sup>47</sup> The Act also authorized the government to

40. SHOULD AMERICA PAY?, *supra* note 35, at 325.

41. John David Smith, *The Enduring Myth of "Forty Acres and a Mule,"* THE CHRONICLE REVIEW, Feb. 21, 2003, at B11, available at <http://chronicle.com/cgi2bin/printable.cgi?article=http://chronicle.com/weekly/v49/i24/24b01101.htm>.

42. The author specifically refers to the Second Confiscation Act, the Emancipation Proclamation and the Thirteenth Amendment. *Id.* at 321-22, 325.

43. *Id.* at 324.

44. Tuneen E. Chisolm, ' , *Sweep Around Your Own Front Door: Examining the Argument for Legislative African American Reparations*, 147 U. PA. L. REV. 677, 685 (1999).

45. *Id.* at 686.

46. 50 U.S.C. § 1989-1989(d) (1994).

47. § 1989-1989(d).



pay \$20,000 to those individuals living at the time the legislation was enacted. It also created a public fund to educate people about the internment camps.<sup>48</sup> Reparations supporters rely on the Civil Liberties Act to justify their request for reparations to Blacks.<sup>49</sup> However, the Act only authorized funds to individuals who were directly interned and living at the time of measure's enactment. Today, all slaves are long dead and thus the Civil Liberties Act cannot be used as a model for reparations to Blacks. Following the Civil Liberties Act, Congressman John Conyers, in 1989, introduced H.R. 40, the African American Reparations Commissions Act.<sup>50</sup> The Act called for the establishment of a commission to study slavery and discrimination against freed slaves and their descendants.<sup>51</sup> The proposed commission would also make recommendations to Congress for appropriate reparations for Blacks.<sup>52</sup> The bill has not made it out of the judiciary committee in Congress to date.<sup>53</sup>

Reparation supporters have not only sought legislative remedies, but are presently seeking judicial relief from the courts. First advocates tried to sue the U.S. government in *Cato v. United States*.<sup>54</sup> The plaintiffs sought \$100,000,000.00 for slavery and its effects, including kidnapping, forced labor, and imposed oppression.<sup>55</sup> The plaintiffs claimed that slavery had residual negative effects on modern Blacks and the government failed to remedy those effects.<sup>56</sup> The court of appeals dismissed the case finding that the plaintiffs failed to state a claim because they did not allege acts against specific officials or programs that are unconstitutional.<sup>57</sup> The Court went on to state that the plaintiffs should seek remedies in the form of legislation.<sup>58</sup>

Currently, reparations advocates have filed a suit against private corporations and insurance companies.<sup>59</sup> Plaintiffs in the class-action

---

48. § 1989-1989(d).

49. Chisolm, *supra* note 44, at 714.

50. *See* sources cited *supra* note 3.

51. *Id.*

52. *Id.*

53. Chisolm, *supra* note 44, at 687.

54. 70 F.3d 1103, 1106 (9th Cir. 1995).

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. The suit is modeled after the Holocaust cases, where the German government paid money to Holocaust survivors. *See In Re Holocaust Victim Assets Litig.*, CV-96-4849 (E.D.N.Y 1996).

suit *Farmer-Paellmann v. FleetBoston Financial Corp.*,<sup>60</sup> allege that defendants insured slaveowners against the loss of their slaves and benefited from slave labor.<sup>61</sup> The plaintiffs did not name a specific dollar amount, however, the suit estimates that the value of slave labor is as high as \$1.4 trillion.<sup>62</sup> The complaint has five counts including conspiracy and human rights violations.<sup>63</sup> At the time of publication of this article, the case is still pending in the U.S. District Court of New York.

The *Farmer-Paellman* lawsuit, however, faces problems similar to those confronted in *Cato*, namely that the statute of limitations has run and the plaintiffs cannot prove direct harm. The failed attempts to secure reparations for Blacks reflects the general attitude toward slavery. People want to move beyond our scarred past and focus on productive ways to address societal problems today.<sup>64</sup>

### III. BLACKS ARE NOT ENTITLED TO REPARATIONS BASED ON THE PAST INJUSTICES OF SLAVERY

Slavery is a part of the history of our society and cannot be erased. When proponents rely on reparations to cure the past treatment of Blacks in this country, they fail to realize the basic underlying premise that Blacks can never be made whole again. There is no way to right the wrongs from America's unsavory past. The essence of black culture was taken away and replaced with a new way of life. Now, we are all Americans and must learn to effectively deal with current problems. These problems certainly will not miraculously disappear simply despite claims by reparations supporters that holding the government responsible for slavery will correct the past. Slavery ended over one century ago and Blacks today would be different as a people if slavery had not occurred and not necessarily in a better position than they are in currently. Rather than trying to make Blacks

---

60. CV-02-1862 (E.D.N.Y. 2002) (Compl. Mar. 26, 2002).

61. *Farmer-Paellmann* Compl. ¶ 31. The suit was filed on behalf of 35 million African Americans. The claim is based upon records produced by the defendants indicating their connection to the slave trade. *Id.*

62. *Id.* at ¶ 10.

63. *Id.* at ¶¶ 50-51, 57-61. The additional counts are a demand for an accounting of slave trade records, conversion and unjust enrichment. *Id.*

64. A poll conducted by CNN shows that most Americans are against paying any form of reparations. Eighty-one percent of Americans are against the government paying reparations, and of that number, thirty-seven percent were black. CNN/USA TODAY/GALLUP POLL: SLAVE REPARATIONS (Feb. 8-10, 2002).

“whole,” reparations supporters should expend their energy in a more productive manner.

*A. No Direct Harm: All Slaves and Slave-Owners are Dead*

The reparations movement faces significant problems in trying to name people who have a legitimate claim against individual defendants. There are no slaves alive today who can bring suit, and there are no slave-owners who can be sued. This is a distinct difference between reparations for slavery and reparations paid to Japanese Americans or to victims of the Holocaust.<sup>65</sup> Here, proponents cannot show direct harm. Instead, they are seeking to have the government pay reparations to individuals who are several generations removed from slavery.<sup>66</sup>

They claim that the United States government has never acknowledged or apologized for the evil institution of slavery.<sup>67</sup> Black Americans deserve payment for the wealth slave labor created, they continue.<sup>68</sup> When opponents point out that both slaves and enslavers are long dead, proponents have an answer.

The government must, they contend,” pay for the “lingering effects,” “vestiges” or “legacy” of slavery that, they claim, still affect black America today.<sup>69</sup> However, it is impossible to determine whether a link exists between slavery and the problems facing Blacks today. For example, reparations proponents bludgeon the opposition into submission with a wealth of data about poverty, infant mortality rates, health care and the number of black men in the prison system.<sup>70</sup> However, many of these problems have only surfaced within the last forty years and cannot be traced directly to slavery.<sup>71</sup>

In addition, there is no way to accurately identify who were descendants of slaves and those of slave-owners. Generations of people were born who belonged to both groups. Our nation today is a

---

65. Robert W. Tracinski, *America's "Field of the Blackbirds": How the Campaign for Reparations for Slavery Perpetuates Racism*, 3 J.L. SOC'Y 145, 147 (Winter 2002).

66. *Id.* at 148.

67. ROBINSON, *supra* note 4, at 62.

68. Vincene Verdun, *If the Shoe Fits, Wear It: An Analysis of Reparations to African Americans*, 67 TUL. L. REV. 597, 608 (1993) (stating, “slaves were not paid for their labor for more than two hundred and sixty-five years, thereby depriving the descendants of slaves of their inheritance; the descendants of the slavemasters inherited the benefit derived from slave labor, which properly belonged to the descendants of slaves.”).

69. Walter Williams, *Reparations Clangor*, WASHINGTON TIMES, June 14, 2001.

70. ROBINSON, *supra* note 4, at 62.

71. Tracinski, *supra* note 65, at 149.

reflection of many different cultures and ethnicities coalescing into one “melting pot.” As a result, asking for reparations based solely on the fact that a person is black actually perpetuates the same racism that proponents vigorously argue to curtail. It would be unfair to penalize and simultaneously reward reparations to people today when our history is incredibly convoluted.

Reparationists refuse to acknowledge that slavery had a negative impact on everyone. Reparations advocates will give short shrift to white poverty, perhaps even denying that slavery was meant to, and in fact did, impoverish the masses of white people as much as it did the Blacks.

Soon, everyone will want reparations, even neo-Confederates who cherish their ancestors who fought to preserve slavery.<sup>72</sup> Notice

---

72. Lest you think I'm making a cruel joke, peruse this petition put out by an organization called League of the South:

To Southerners everywhere: The League of the South is considering petitioning Congress to conduct a thorough, non-partisan study examining the long neglected injustices arising from the war crimes committed across the South from 1861-1865 in violation of the U.S. Constitution, the Law of Nations, and U.S. Executive Order Number 100, whereby the private property of non-combatants was ravaged, burned, stolen, and destroyed as a deliberate policy of an unconstitutional war of invasion, conquest, and occupation.

Tens of thousands of individuals in the South are now signing petitions asking The League of the South to represent them as a class by exercising the people's right of petition or by a suit at law for damages. We anticipate that a thorough and impartial Congressional investigation will reveal the necessity for a long overdue compensatory program of justice for people of all races in the South who were subjected to treatment during and after the War Between the States that resulted in little less than the barbaric dispossession and destruction of the Southern people and their way of life.

No reparations, no indemnification, and no “Marshall Plan” has ever been conceived or enacted by the United States Government. The United States Government now claims to be the moral monitor for the entire world; however, it cannot justify this position without first cleansing its own shield of the shame of war crimes and acts of vengeance against Southern Americans in actions perhaps best described by General William Tecumseh Sherman, who said: “...about 20% of our effort [in Georgia and South Carolina] was against military objectives. The rest [80%] was sheer waste and destruction. Sadly, such unconscionable depredations were all too common across the South during both the war and Reconstruction.

The League of the South plans to seek reparations from the United States Government for all Southerners and their families who suffered atrocities during the war and the years of military occupation that followed.

An electronic version of this petition is available on the League of the South website, at <http://www.dixienet.org/ls-homepg/petition/reparations-petition.htm> (on file with MARGINS: Maryland's Law Journal on Race, Religion, Gender and Class) (last visited Apr. 20, 2003).

this petition does not mention the South's enslavement of millions of Blacks, its deliberate impoverishment of and mis-education of the masses of Whites and Blacks or of its cramming the Fugitive Slave Law,<sup>73</sup> which resulted in some free Blacks who were never slaves being kidnapped and sold, down the throats of an unwilling nation.<sup>74</sup> There is not a hint that Southerners were in any way to blame for the fate that befell them. Here we see the likeness of minds of the neo-Confederate and the black reparations supporter. Both embrace perpetual victim hood. Both claim to still suffer the agony inflicted not on themselves, but on ancestors long since dead. Neither is able to put what happened over 135 years ago behind them.

### *B. No Viable Way to Administer*

Proponents are so absorbed in demanding a payout that they fail to realize there is no practical means by which to administer reparation payments to Blacks. Some advocates claim that the government owes Blacks approximately \$1.6 trillion for slavery and its lingering effects.<sup>75</sup> Others claim the number is as high as \$24 trillion.<sup>76</sup> Separate from the cash amount, some advocates demand social programs, including continued affirmative action, community-building initiatives that are not granted to other disadvantaged groups, and preferential treatment.<sup>77</sup> In 2000, the total output for our entire economy was about \$9.8 trillion.<sup>78</sup> Trying to meet these unreasonable demands would overwhelm our national resources and substantially increase our national debt. Given the current state of our economy, everyone would suffer as a result. Currently, the federal government funds the economy either through taxes or by assuming the debt.<sup>79</sup> Paying reparations would essentially hold all citizens accountable for

---

73. Fugitive Slave Act of 1850, 31st Cong., 1<sup>st</sup> Sess. ch. 60 (repealed 1864).

74. KLINKNER, *supra* note 1, at 43-44.

75. Kimberly Hohman, *Slavery Reparations*, at <http://racereactions.about.com/library/weekly/blreparations.htm> (last visited Apr. 16, 2003) (on file with MARGINS: Maryland's Law Journal on Race, Religion, Gender and Class).

76. Tracinski, *supra* note 65, at 151 (citing KEVIN MERIDA, *THE AFROCENTRIC EXPERIENCE, WHY REPARATIONS?*)

77. *Id.* at 722-27.

78. *Id.* at 158 (citing BUREAU OF ECONOMIC ANALYSIS, NATIONAL INCOME AND PRODUCTS ACCOUNTS, *available at* [www.bea.doc.gov/bea/dn/nipaweb/Index.asp](http://www.bea.doc.gov/bea/dn/nipaweb/Index.asp)).

79. THE WHITE HOUSE, OFFICE OF MGMT. AND BUDGET, *WHERE THE MONEY COMES FROM – AND WHERE IT GOES*, at <http://www.whitehouse.gov/omb/budget/fy2002/guide02.html> (on file with MARGINS: Maryland's Law Journal on Race, Religion, Gender and Class) (last visited Apr. 20, 2003).

the debt and would undermine our entire economic system.<sup>80</sup> These demands are completely unrealistic.

Moreover, no country has an equal class system, which is not to suggest that we as a society should not strive for one. However, reparation payments are not the medium to create such a system. Forcing some people to pay money to others solely based upon racial ethnicity would only further divide the country and enhance the racial problems currently plaguing our society. Reparations proponents would be hard pressed to find a society where all people live equally in bliss. The nature of a capitalist economy is that there will always be classes of people who have advantages over others.<sup>81</sup> Several classes of minorities have lower incomes than the majority class, including Hispanics and women.<sup>82</sup> Yet, those classes of people are not seeking reparations despite being discriminated against and disadvantaged.

### *1. Reparations Paid in the Form of a Trust Fund*

Several proponents recommend that reparations be paid in the form of a trust fund.<sup>83</sup> Essentially, each black family would receive a lump sum amount, similar to hitting the lottery, or the money would be used to create programs benefiting Blacks.<sup>84</sup> Consider the following scenario:

Hypothetically, a black family that lives in Columbia, Maryland and earns \$90,000 a year would be eligible for reparations. The payment the family would receive is not clear. Reparationists themselves cannot agree on what form reparations will take. Some want each black family to get an individual check.<sup>85</sup> Nation of Islam

---

80. See *supra* text accompanying notes 75-78 (noting that one estimated payout, not including programs reparationists want the government to fund, is nearly three times the yearly output of the entire U.S. economy).

81. Garry Goodpaster, *Equality in Free Speech: The Case Against Substantive Equality*, 82 IOWA L. REV. 645, 676 (1997) (noting "All the gains [of a capitalist economy], particularly efficiency, are 'bought at the cost of inequalities in income and wealth and in the social status and power that go along with income and wealth . . .'" (citing ARTHUR M. OKUN, EQUALITY AND EFFICIENCY: THE BIG TRADEOFF 51 (1975))).

82. The comparison is based on White males. In 2001, Hispanics on average earned \$33,565, as compared to Whites who earned on average \$44,517. Women earned \$29,215 as a median income compared to \$38,275 for men. CARMEN DENAVAS-WALT & ROBERT W. CLEVELAND, U.S. CENSUS BUREAU, MONEY INCOME IN THE UNITED STATES: 2001 at 2 (2002), available at <http://www.census.gov/prod/2002pubs/p60-218.pdf>.

83. Chisolm, *supra* note 38, at 722-23.

84. *Id.*

85. Manning Marable, *In Defense of Black Reparations*, ZNET Daily Commentaries (Oct. 30, 2002), at <http://www.zmag.org/sustainers/content/2002-10/30marable.cfm> (last visited Apr. 23, 2003).

leader Minister Louis Farrakhan wants land.<sup>86</sup> Others have proposed the money be put in a “trust fund” to be managed by persons not yet named.

At any rate, the black Columbia family would receive some money. Now suppose there is a white family in Baltimore City that makes only \$30,000 and is descended from those poor Southern Whites who the slave system was designed to keep as impoverished and uneducated as black slaves. The reparations plan makes the black Columbia family eligible to receive money, free college education, or free health care, among other things proposed by reparationists. They would receive this even if the family provider held jobs that provide for comprehensive health care and a salary that makes college more manageable than that of the white Baltimore family. Never mind that the Baltimore family might be in greater need of health care or assistance with college tuition. In the reparationist’s view of a fair world, the Columbia family and not the Baltimore one, is entitled to compensation.

And let us not forget, that Columbia family already has advantages the Baltimore family does not. We have already seen that they make more money. The property tax rate for the Columbia family is lower than the Baltimore family. In addition, the Baltimore family might have an increase in their local taxes in order to pay for the reparation program. The reparations lobby believes that a reparations payment to the Columbia family and none to the Baltimore family is fair.

## *2. The Government has Already Paid Reparations in the Form of Social Programs*

The government has already implemented programs to help Blacks combat racism and discrimination. For example, Upward Bound, Headstart, the Higher Education Act,<sup>87</sup> the Elementary and Secondary Education Act<sup>88</sup> and the Job Corps were all designed to aid the poor who, at the time, were disproportionately African American.<sup>89</sup> By some estimates, the total cost of the Great Society programs over the years amounts to \$305.7 billion.<sup>90</sup>

---

86. Louis Farrakhan, Millions for Reparations Rally, Washington, D.C. (Mar. 2002).

87. Higher Education Act of 1965, 20 U.S.C. § 1001 (1965) (last amended 1998).

88. Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 (1965) (last amended 2001).

89. HOROWITZ, *supra* note 8, at 123-24.

90. In addition, federal and state spending on welfare programs during 1964-1973 totaled \$1.49 trillion. U.S. SENATE REPUBLICAN POLICY COMMITTEE, GORE, BRADLEY

Since the civil rights legislation of the 1960's, fifty percent of Blacks are now in the middle-class and over seventy-eight percent are above the poverty line.<sup>91</sup> Black women hold twenty-four percent of all professional and/or managerial jobs, and black men hold seventeen percent.<sup>92</sup> Today black women own thirty-eight percent of the nation's black-owned firms, which is a higher percentage of female owners than any other minority race.<sup>93</sup> The latest census figures show a black poverty rate of 22.5 percent is down from twenty-five percent in the previous census and down from eighty-seven percent in the 1950's.<sup>94</sup>

That is not data reparations advocates want to hear. But their depiction of American Blacks in 2003 as poor, impoverished and oppressed overstates the true reality of the status of Blacks in this country. The government has been compassionate about the plight of Blacks. Over the past forty years, the government enacted legislation to combat racism and help Blacks become self-sufficient.<sup>95</sup> On June 4, 1965, former President Lyndon Baines Johnson gave the commencement address at Howard University.<sup>96</sup> The head of the United States government spoke directly to the injustice of the "lingering effects" and "vestiges" and "legacy" of slavery on Negroes.<sup>97</sup>

African-American poverty is not white poverty. Many of its causes are the same. But there are differences – deep, corrosive, obstinate differences - radiating painful roots into the community, and into the family, and the nature of the individual. These differences are not racial differences. They are solely and simply the consequence of ancient brutality, past injustice, and

---

PROPOSE RECORD SPENDING INCREASES: DEMOCRAT SPENDING PLANS ECLIPSE LBJ'S GREAT SOCIETY (2000), available at <http://www.senate.gov/~rpc/releases/1999/tx011900.htm>.

91. PROCTOR, U.S. CENSUS BUREAU, POVERTY IN THE U.S.: 2001, CURRENT POPULATION REPORTS CONSUMER INCOME at 6 (2002), available at <http://www.census.gov/prod/2002/pubs/p60-219.pdf>.

92. JESSE MCKINNON & KAREN HUMES, U.S. CENSUS BUREAU, THE BLACK POPULATION IN THE UNITED STATES: POPULATION CHARACTERISTICS at 4 (2000), available at <http://www.census.gov/prod/2000pubs/p20-530.pdf>.

93. U.S. CENSUS BUREAU, AFRICAN-AMERICAN HISTORY MONTH: FEBRUARY 2003 at 3, available at <http://www.census.gov/Press-Release/www/2003/cb3ff01.html>

94. See *supra* text accompanying note 91.

95. See *supra* text accompanying note 89.

96. President Lyndon B. Johnson, Commencement Address at Howard University, *To Fulfill These Rights* (June 4, 1965) (transcript available at the Lyndon Baines Johnson Library and Museum, at [www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/650604.asp](http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/650604.asp)).

97. *Id.*



persistent prejudice. They are anguishing to observe. For the African-American, they are a constant reminder of oppression. For the white, they are a constant reminder of guilt. But they must be faced and they must be dealt with and they must be overcome . . . . Nor can we find a complete answer in the experience of other American minorities. They made a valiant and a largely successful effort to emerge from poverty and prejudice. The African-American, like these others, will have to rely mostly upon his own efforts. But he just cannot do it alone. For they did not have the heritage of centuries to overcome, and they did not have a cultural tradition which had been twisted and battered by endless years of hatred and hopelessness, nor were they excluded - these others - because of race or color a feeling whose dark intensity is matched by no other prejudice in society.<sup>98</sup>

This quote is reminiscent of the assertions of today's reparations supporters. It sounds familiar because they are simply repeating what has been said many times before. It is largely acknowledged that slavery was a horrible blemish in American's history. But we must not allow our history to dictate our future.

On August 6, 1965, Johnson signed the Voting Rights Act and explicitly elaborated on slavery. He stated:

Three and a half centuries ago, the first Negroes arrived at Jamestown. They did not arrive in brave ships in search of a home for freedom. They did not mingle fear and joy, in expectation that in this New World anything would be possible to a man strong enough to reach for it. They came in darkness and they came in chains. And today we strike away the last major shackle of those fierce and ancient bonds. Today the Negro story and the American story fuse and blend. And let us remember that it was not always so. The stories of our Nation and of the American Negro are like two great rivers. Welling up from that tiny Jamestown spring they flow through the along divided channels. When pioneers subdued a continent to the need of man, they

---

98. *Id.*

did not tame it for the Negro. When the Liberty Bell rang out in Philadelphia, it did not toll for the Negro.<sup>99</sup>

But Johnson did more than just echo the sentiments of reparations supporters. He acted, along with the great black New York Congressman Adam Clayton Powell, and pushed through a plethora of Great Society programs that sought to correct the alleged lingering effects the reparationists claim have not been corrected.<sup>100</sup> Many if not all of these programs are still in effect, which allows those “descendents” to take full advantage of those programs. At this juncture in our history, any debt owed has been paid in full.

#### IV. REPARATIONS WILL NOT ALLEVIATE THE PROBLEMS FACING BLACKS TODAY

Reparations advocates fail to realize that reparation handouts will never cure the ills Blacks face today as individuals and as a community.<sup>101</sup> Reparations will not give Blacks self-worth. It will not lower poverty, the crime rates or out of wedlock birth rates, even though proponents try to use these statistics to justify their claim that the government should pay reparations. These problems are engrained within our culture. They are a mindset that cannot be changed by any proposed reparations. Instead, proponents should devote their time and energy to alleviate these problems by proposing viable solutions that will truly impact Blacks in a positive way.

Reparations supporters should preach self-reliance to the black community rather than advocating for an unreasonable and unrealistic fix to current social ills. When people are not forced to take responsibility for their lives, this attitude actually reinforces the perpetual cycle of problems facing the black community.<sup>102</sup> Blacks should stop treating themselves as victims and take responsibility for their lives.<sup>103</sup> But reason has been the first casualty in the Victimhood Sweepstakes, from which the reparations movement gets its *casus belli*. Will the reparations issue rear its head again if paid to black

---

99. President Lyndon B. Johnson, Remarks in the Capitol Rotunda at the Signing of the Voting Rights Act (Aug. 6, 1965) (transcript available at the Lyndon Baines Johnson Library and Museum, at [www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/650604.asp](http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/650604.asp)).

100. See *supra* text accompanying notes 86-89.

101. See generally HOROWITZ, *supra* note 8, at 125-28.

102. Tracinski, *supra* note 65, at 150.

103. HOROWITZ, *supra* note 8, at 14.

Americans? It certainly will. Many other ethnic groups will ask for handouts until our country is bankrupt, which ultimately harms everyone. Therefore, Blacks in this country would better reach their goals by relying on themselves to attain the American Dream.

As such, the focus should be on strengthening the economic base of the black community. One theory on how to do this is through cooperative economics, which promotes the reinvigoration of a community by encouraging community residents to financially patron local businesses. In turn, these businesses will reinvest their resources into community development enterprises.<sup>104</sup>

Black Cooperative Economics is an attempt to reinvigorate the black community by establishing a system of economic self-sufficiency within the community.<sup>105</sup> Black residents support black businesses while these same businesses provide the capital base for the community, thus a creating a beneficial cyclical effect.<sup>106</sup> The premise behind black cooperative economics is that Blacks should not depend upon anyone, especially the government, to invest money into black communities in order to strengthen the black community. The result of this cyclical economic structure and the element of exclusivity yield a self-sufficient economic system that is durable and permanent.<sup>107</sup> In addition to encouraging responsibility of black businesses to reinvest within the black community, black middle-class professionals are encouraged to prime the capital pump by investing within black communities.<sup>108</sup> Consequently, a self-sufficient enterprise is born and sustained by the black community for its own benefit. These ideas would be a healthier and more productive way to address the problems of black today instead of wasting time and energy on the reparationists' lost cause.

---

104. CLAUD ANDERSON, *BLACK LABOR/WHITE WEALTH* 33-37 (1994); *see also* GEORGE FRASER, *SUCCESS RUNS IN OUR RACE: THE COMPLETE GUIDE TO EFFECTIVE NETWORKING IN THE AFRICAN-AMERICAN COMMUNITY* 257-58 (1994).

105. *Id.* at 184-92.

106. *Id.*

107. *Id.*

108. FRASER, *supra* note 104, at 285.

## V. CONCLUSION

The reparations movement should ultimately fail. Reparations for slavery will never correct the past injustices of slavery. Those claiming that a debt is owed cannot prove direct harm to Blacks today because all slaves and slave-owners are long dead. It would be unfair to penalize people today for the mistakes of their ancestors. Moreover, slavery had a negative impact on all Americans.

Reparations supporters also fail to acknowledge the many programs the government has already implemented. These programs not only benefit Blacks but also other minorities to work towards attaining a better society. Requiring the government to invest additional time and resources to pay reparation would be extremely burdensome and difficult to administer.

Furthermore, reparations will not cure the problems currently facing Blacks today. Blacks should stop treating themselves as victims and take responsibility for their own futures. Blacks are not given enough credit to the progress already made in seeking racial equality in this country. It is interesting that Frederick Douglass, who felt the lash and sting of slavery and knew the oppression and degradation firsthand, never asked his owners for reparations. In a speech given to the Massachusetts Anti-Slavery Society in April of 1865, Douglass told those in attendance:

Everybody has asked the question . . . 'What shall we do with the Negro?' I have had but one answer from the beginning. Do nothing with us! Your doing with us has already played the mischief with us. Do nothing with us! If the apples will not remain on the tree of their own strength, if they are wormeaten at the core, if they are early ripe and disposed to fall, let them fall! I am not for tying or fastening them on the tree in any way, except by nature's plan, and if they will not stay there, let them fall. And if the Negro cannot stand on his own legs, let him fall also. All I ask is, give him a chance to stand on his own legs! Let him alone! If you see him on his way to school, let him alone, don't disturb him! If you see him going to the dinner-table at

a hotel, let him go! If you see him in the ballot-box, let him alone, don't disturb him!<sup>109</sup>

Rather than demand reparations from the government the best plan is to drop the reparations demand altogether and focus on self-reliance and black economic building.

---

109. 4 THE LIFE AND WRITINGS OF FREDERICK DOUGLASS 164 (Philip S. Foner ed. Int'l Publishers 1975) (1950).