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EXPLORING WHITE RESISTANCE TO RACIAL RECONCILIATION IN THE UNITED STATES

*Taunya Lovell Banks**

*"Not everything that is faced can be changed, but nothing can be
changed until it is faced."*¹

*"We haven't discovered the true stories of the past and that is a
first step in dealing [with] the present, forgetting just continues the
wrong."*²

I. INTRODUCTION

Over the past two decades, numerous legal articles set out the case for black reparations.³ Calls for black reparations come at a time

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1. Attributed to James Baldwin.

2. TROUBLE BEHIND (Robby Henson 1990).

3. See, e.g., RICHARD F. AMERICA, PAYING THE SOCIAL DEBT: WHAT WHITE AMERICA OWES BLACK AMERICA (1993); CLARENCE J. MUNFORD, RACE AND REPARATIONS: A BLACK PERSPECTIVE FOR THE 21ST CENTURY (1996); Natasha Parassram Concepcion, *Legislative Focus: Reparations for African-Americans*, 8 HUM. RTS. BRIEF 16 (2001); Anthony E. Cook, *King and the Beloved Community: A Communitarian Defense of Black Reparations*, 68 GEO. WASH. L. REV. 959 (2000); Adrienne D. Davis, *The Case for United States Reparations to African Americans*, 7 HUM. RTS. BRIEF 3 (2000); Art Alcausin Hall, *There Is a Lot to Be Repaired Before We Get to Reparations: A Critique of the Underlying Issues of Race That Impact the Fate of African American Reparations*, 2 SCHOLAR: ST. MARY'S L. REV. ON MINORITY ISSUES 1 (2000); Imari A. Obadele, *Reparations Now! A Suggestion Toward the Framework of a Reparations Demand and a Set of Legal Underpinnings*, 5 N.Y.L. SCH. J. HUM. RTS. 369 (1988); Irma Jacqueline Ozer, *Reparations for African Americans*, 41 HOW. L. J. 479 (1998); Tyron J. Sheppard & Richard Nevins, *Constitutional Equality-Reparations at Last*, 22 UWLA L. REV. 105 (1991); Vincene Verdun, *If the Shoe Fits, Wear It: An Analysis of Reparations to African Americans*, 67 TUL. L. REV. 597 (1993); Tuneen E. Chisolm, Comment, *Sweep Around Your Own Front Door: Examining the Argument for Legislative African American Reparations*, 147 U. PA. L. REV. 677 (1999); Rhonda V. Magee, Note, *The Master's Tools, from the Bottom up: Responses to African-American Reparations Theory in Mainstream and Outsider Remedies Discourse*, 79 VA. L. REV. 863 (1993); Note, *Bridging the Color Line: The Power of African-American Reparations to Redirect America's Future*, 115 HARV. L. REV. 1689 (2002); Calvin J. Allen, *The Continuing Quest of African Americans to Obtain Reparations for Slavery*, 9 NAT'L B. A. MAG., May-June 1995, at 33.

of mounting political conservatism. There is, for example, strong opposition by some white and non-white Americans to affirmative action efforts designed to aid people "raced"⁴ as black in America. Many black⁵ Americans, disillusioned with the lack of progress and the decline of token affirmative action, "consider reparations for slavery and its legacy . . . a more responsible accounting for human and civil rights violations than affirmative action."⁶ These factors may explain why the notion of reparations, long popular among black working class Americans,⁷ is gaining increasing support from black

4. I use the term "raced" as a verb here and other places throughout my article to remind the reader that race in the United States is often imposed on some groups of people.

5. I continue to use the term "black," rather than the currently popular term "African American," to denote people with some African ancestry who are "raced" as black in the United States. For a more complete discussion of my position, see Taunya Lovell Banks, *Colorism: A Darker Shade of Pale*, 47 U.C.L.A. L. REV. 1705, 1708 n.12 (2000).

6. Robert Westley, *Many Billions Gone: Is It Time to Reconsider the Case for Black Reparations?*, 40 B.C. L. REV. 429, 432 n.9 (1998); see also Alfred L. Brophy, *Some Conceptual and Legal Problems In Reparations For Slavery*, 58 N.Y.U. ANN. SURV. OF AM. L. 497, 498-501 (2003) (attributing the increasing popularity of reparations over the past fifteen years to the decline of affirmative action, reparation awards to other groups and an increase in government apologies for past wrongdoings); Watson Branch, Comment, *Reparations for Slavery: A Dream Deferred*, 3 SAN DIEGO INT'L L.J. 177, 194 (2002) (discussing that if there were reparations or racial reform at any time in history, many of the ills that plague today's black society would not exist).

7. There is a popular legend within the black community that following the end of African slavery in the United States, almost 140 years ago, former slaves were promised 40 acres and a mule. The truth is far more complex. *New York Times* editor Brent Staples writes of this myth:

The confiscations were in accordance with Federal law. If sustained and accelerated, the land grants would have created black capital and independence almost immediately and precluded much of the corrosive poverty that still grips the black South. President Andrew Johnson was nearly impeached, in part for obstructing Congress on Reconstruction. Meanwhile, he canceled Special Field Order 15, returning land to white owners and condemning blacks to de facto slavery.

Brent Staples, *Forty Acres and a Mule*, N.Y. TIMES, July 21, 1997, at A16.

Even before the Civil War, some black Americans advanced claims for reparations. Professor Derrick Bell notes that in 1829, David Walker, a black writer/activist, complained about the lack of compensation for slave labor. DERRICK A. BELL, JR., *RACE, RACISM AND AMERICAN LAW* 46 n.4 (2d ed. 1980) (citing Ewart Guinier, Book Review, 82 YALE L. J. 1719, 1721 (1973) (reviewing BORIS I. BITTKER, *THE CASE FOR BLACK REPARATIONS* (1973))). Clearly, however, the Reconstruction Congress that enacted several pieces of civil rights legislation, including three constitutional amendments, never thought about compensating blacks for their slave labor, nor for the labor of their enslaved ancestors. See C. F. OUBRE, *FORTY ACRES AND A MULE* 1, 18-19 (1978); Westley, *supra* note 6, at 462.

professionals and intellectuals.⁸

Reparation discussions tend to focus, however, almost entirely on two forms of reparations, economic redress and apologies by government for past wrongs to individual and group claimants. Strangely, there is little discussion of racial reconciliation as a component of black reparations.⁹ Granted, it is not entirely clear whether all reparation proponents see racial reconciliation as a goal. Further, it remains to be seen whether this country is capable of

8. See Tamar Lewin, *Calls for Slavery Restitution Getting Louder*, N.Y. TIMES, June 4, 2001, at A15. Granted, recent threats of continuing attack from without have pushed concerns about domestic policy, including race relations, to the background. See Somini Sengupta, *Sept. 11 Attack Narrows the Racial Divide*, N.Y. TIMES, Oct. 10, 2001, at B1 (suggesting that for the moment, at least, "old racial antagonisms [against black Americans] have dissolved"). Nevertheless, calls for black reparations persist. See, e.g., Manning Marable, *Reparations and Our Rendezvous with History*, at <http://www.afsc.org/pwork/0202/020213.htm> (last visited Aug. 4, 2003). "Although the traumatic events of September 11 have pushed the black reparations issue temporarily into the background, the reality is that U.S. and Western European imperialism ultimately will be forced to acknowledge the legitimacy and necessity of at least a limited reparation agreement." *Id.*

9. Meaningful reconciliation might require three steps: acknowledgment of prior wrongs; an official apology for those wrongs; and compensation for the wrongs. See generally Sanford Cloud, Jr., *The Next Bold Step Toward Racial Healing and Reconciliation: Dealing With the Legacy of Slavery*, 45 HOW. L. J. 157 (2001); Sherrilyn A. Ifill, *Creating a Truth and Reconciliation Commission for Lynching*, 21 LAW & INEQUALITY 263 (2003) (proposing local Truth and Reconciliation Commissions ("TRC"s) in communities where lynchings occurred as a form of education and racial reconciliation); Jamie L. Wacks, *A Proposal for Community-Based Racial Reconciliation in the United States Through Personal Stories*, 7 VA. J. SOC. POL'Y & L. 195 (2000); Eric K. Yamamoto, *Beyond Redress: Japanese Americans' Unfinished Business*, 7 ASIAN L. J. 131, 136-37 (2000); Eric K. Yamamoto, *Racial Reparations: Japanese American Redress and African American Claims*, 40 B.C. L. REV. 477, 519 (1999) [hereinafter *Racial Reparations*]. Sumi Cho writes: "There has been a significant amount of recent literature on reconciliation and healing. As Professor [Eric] Yamamoto points out, however, most of these works are 'uni-disciplinary' in the field of theology, and draw examples primarily from outside of the United States. None of the works, he notes, address interracial conflicts." Sumi Cho, *Redeeming Whiteness in the Shadow of Internment: Earl Warren, Brown, and a Theory of Racial Redemption*, 40 B.C. L. REV. 73, 134 n.310 (1998) (citing ERIC K. YAMAMOTO, *INTER-RACIAL JUSTICE: CONFLICT AND RECONCILIATION IN POST-CIVIL RIGHTS AMERICA* 34 (1999)). For the reconciliation literature cited by Professor Yamamoto, see JOHN DAWSON, *HEALING AMERICA'S WOUNDS* (1995); GEIKO MÜLLER-FAHRENHOLZ, *THE ART OF FORGIVENESS: THEOLOGICAL REFLECTIONS IN HEALING AND RECONCILIATION* (1997); SPENCER PERKINS & HAROLD RICE, *MORE THAN EQUALS: RACIAL HEALING FOR THE SAKE OF THE GOSPEL* (1993); *THE RECONCILIATION OF PEOPLES: CHALLENGE TO THE CHURCHES* (Gregory Baum & Harold Wells eds., 1997); ROBERT J. SCHREITER, *RECONCILIATION: MISSION & MINISTRY IN A CHANGING SOCIAL ORDER* (1992); DONALD SHRIVER, *AN ETHIC FOR ENEMIES: FORGIVENESS IN POLITICS* (1995); see also ANDREW SUNG PARK, *RACIAL CONFLICT AND HEALING: AN ASIAN-AMERICAN THEOLOGICAL PERSPECTIVE* (1996).

meaningful racial reconciliation.¹⁰ Nevertheless, the potential for

10. According to several surveys, seventy-five percent of Americans opposed monetary reparations for black Americans whose ancestors were slaves. A similar number of Americans also oppose an apology for slavery. See Raymond Daniel Burke, *Soldiers' Blood Is Penance Paid for Sin of Slavery*, BALT. SUN, Sept. 17, 2002, at 17A (suggesting that the death of 23,000 American soldiers at the battle of Antietam during the Civil War was "an enormous down payment in blood"); Nicholas Davis, *Slavery and Reparations; Top Black Lawyers Seeking Damages in U.S. Court*, THE TORONTO SUN, Nov. 19, 2001, at 15; Gwen Daye Richardson, *At Least Consider The Idea of Reparations*, USA TODAY, June 16, 2000, at 29A. A poll conducted by the Foundation for Ethnic Understanding found that although Jewish interviewees were more likely than other white interviewees to support black reparations, a majority, fifty eight percent, opposed black reparations for slavery. Jamal E. Watson, *Blacks, Jews Found Still to Have Rifts Reparations for Slavery Said to Be an Issue*, BOSTON GLOBE, Aug. 6, 2001, at A6. Informed of the poll results, Raymond Winbush, director of the Race Relations Institute at Fisk University, a historically black college in Nashville said: "I find it ironic that so many Jews are opposed to reparations, since they received more reparations in the last 50 years than any other group." *Id.* The Foundation for Ethnic Understanding found Jewish interviewees almost evenly split on the question of an apology for legalized black slavery. *Id.* "Rabbi Marc Schneier, founder of The Foundation for Ethnic Understanding, said that the level of support for reparations among Jews has more to do with the inability of the black community to 'articulate a clear position on the issue.'" *Id.*

Commenting on readers' responses to an article in an earlier issue discussing reparations, the editors of *Time Magazine* wrote:

The issue of slave reparations got quite a few of you mad. Among the rejoinders we can print is one from a Las Vegas reader who told us that "slavery was a grave crime, but people who aren't responsible for what happened owe nothing to people it didn't happen to. It's a fact, pure and simple, that no living African American has ever been the slave of a living white American!" "Even Southerners whose families owned slaves through the Civil War owe nobody a cent," insisted a man from Atlanta. "It's not their fault their ancestors were slave owners." Looking at the issue from another angle, a Texas reader judged, "I don't imagine Southerners could collect reparations for the property the Yankees took during the war, and we shouldn't try. Since all of us, including African Americans, are better off now, let's get on with our lives and stop whipping a dead horse."

Letters, TIME, Apr. 23, 2001, at 14 (referring to Jack E. White, *Don't Waste Your Breath: The Fight for Slave Reparations Is Morally Just, But Totally Hopeless Cause*, TIME, Apr. 2, 2001, at 48).

For examples of black opposition to reparations, consider the remarks of Condoleezza Rice, President Bush's National Security Advisor. When asked for her opinion on black reparations for slavery being discussed during the 2001 UN World Conference Against Racism, Rice said: "Slavery is more than 150 years in the past, and, of course, there's a continuing stain. I've said very often, slavery was America's birth defect. It was there from the beginning. But we have to turn now to the present and to the future." *Durban Racism Conference "Wasted Time": Condoleezza Rice*, AGENCE FRANCE PRESSE, Sept. 9, 2001 (available in LEXIS, News & Bus. Library, Agence France Presse file); see also Deborah Kong, *Some Blacks Don't Want Reparations*, CHATTANOOGA TIMES, May 16, 2002, at A5 (citing reparation opponents Joe Hicks, executive director of the Center for the Study of Popular Culture, a conservative think tank, and Niger Innis, spokesperson for the Congress of Racial Equality).

racial reconciliation is a topic worth exploring. Racial reconciliation would seem to be an irresistible goal for Americans.

As used in this article, the term racial reconciliation encompasses several components. Generally, reconciliation involves bringing estranged parties together in harmony,¹¹ with the reconciled parties moving forward based on a new covenant between societal members.¹² Arguably, the addition of the Thirteenth, Fourteenth, and Fifteenth Amendments to the United States Constitution—this country's covenant—does not represent the kind of new covenant I envision in a truly reconciled society. Meaningful racial reconciliation will not be complete until the social and material condition of subordinate groups equals that of the dominant group, and until there is a "climate of mutual respect and peaceful co-existence."¹³ Reconciliation, whatever the context, is a long-term process.

Thus, in this article I first argue that the reconciliation of all Americans estranged from one another because of the legacy of racial subordination that targets black Americans should be the ultimate goal of the black reparations movement. Reconciliation between blacks and non-blacks, especially whites, cannot occur without an accurate recollection of the past. One starting point is to educate the

Further, Oliver and Shapiro write that "the persistence of antiblack racial attitudes in America" may make prospects for reparations minimal. MELVIN L. OLIVER & THOMAS M. SHAPIRO, *BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL EQUALITY* 189 (1997); see also RANDALL ROBINSON, *THE DEBT: WHAT AMERICA OWES TO BLACKS* 206, 231 (2001) (raising doubts that real racial reconciliation will occur within our lifetime or even the life time of our children).

11. RANDOM HOUSE UNABRIDGED DICTIONARY 1612 (2d ed. 1987).

12. See Alex Boraine, *The Language of Potential*, in *AFTER THE TRC: REFLECTIONS ON TRUTH AND RECONCILIATION IN SOUTH AFRICA* 73, 77 (Wilmot James & Linda Van De Vijver eds., 2000) [hereinafter *AFTER THE TRC*] (citing Jewish philosopher Hannah Arendt).

13. *Id.* "Only when the mass of people who have been both emotionally and economically prejudiced by apartheid begin to believe that there is a new horizon to aspire to, will they be able to embrace a commitment to reconciliation." *Id.* at 79. Franklin D. Raines, Chairman and CEO of Fannie Mae, in speaking to the 2003 graduating class at the University of Maryland, College Park, described what full equality for black Americans would look like:

African Americans would have two million more high school degrees . . . two million more college degrees. . . nearly two million more professional and managerial jobs . . . and nearly \$200 billion more income. . . [T]hree million more African Americans would own their homes. . . African Americans would have \$760 billion more in home equity value. Two hundred billion dollars more in the stock market. One hundred twenty billion dollars more in their retirement funds. And \$80 billion more in the bank.

Franklin D. Raines, Remarks at the University of Maryland Spring 2003 Commencement (May 22, 2003) at http://www.fanniemae.com/media/speeches/speech.jhtml?repID=/media/speeches/2003/speech_209.xml&counter=1&p=media&s=Executive+Speeches (last visited Aug. 26, 2003).

American public about how historians have distorted the history of racial subordination, starting during the slavery era, and how popular culture perpetuates these distortions. Second, I argue that black Americans must find productive ways to cleanse themselves of the past and move beyond historic forms of racial subordination like slavery and *de jure* segregation. This can be done by using their political and economic power to help others fight racial subordination.

Black and white Americans missed two obvious opportunities to reconcile: in the 1860s, after the Civil War, and in the late 1950s, after the United States Supreme Court decision in *Brown v. Board of Education*.¹⁴ In the late nineteenth century the country reconciled regionally (North and South), but at the expense of black Americans who saw their newly won freedoms stripped through laws, court decisions, and physical violence.¹⁵ In the 1960s and 1970s some steps were taken to promote a limited form of equal opportunity for black Americans. But, as then-President Lyndon Johnson told the graduating class at Howard University in 1965, merely eliminating legal race-based barriers is insufficient to “wipe away the scars of centuries We seek not just legal equity . . . , not just equality as a right and a theory, but equality as a fact and equality as a result.”¹⁶

The Supreme Court’s opinion in *Brown v. Board of Education* merely signaled a *beginning* of an end to the legalized racial apartheid in the United States that followed black Americans’ emancipation from slavery.¹⁷ The Jim Crow era in the United States, when some states mandated and other states permitted race-based

14. 347 U.S. 483 (1954).

15. See *infra* notes 91-97, 220-28 and accompanying text. Further, in parts of this nation, slavery or peonage, although prohibited by the Constitution, continued for some black Americans through the first half of the twentieth century. Files in the Library of Congress document that some black Americans in Mississippi, Nebraska, West Virginia, Tennessee, Virginia, Florida, Georgia, South Carolina, and Arkansas were being held against their will in virtual slavery. Len Cooper, *The Damned: Slavery Did Not End With The Civil War. One Man’s Odyssey Into a Nation’s Secret Shame*, WASH. POST, June 16, 1996, at F 1; see also PETE DANIEL, *THE SHADOW OF SLAVERY: PEONAGE IN THE SOUTH, 1901-1969*, at ix (1972) (arguing that “peonage has been an important and continuing theme in the history of postbellum southern labor”).

16. President Lyndon B. Johnson, To Fulfill These Rights, Commencement Address at Howard University (June 4, 1965), at <http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/650604.asp> (last visited Aug. 4, 2003).

17. The Supreme Court’s decision in *Brown* merely declared separate but equal laws unconstitutional in the area of public education, but, in a series of per curiam decisions, the Court clearly conveyed that *Brown* signaled the end of *de jure* race-based discrimination. See, e.g., *Gayle v. Browder*, 352 U.S. 903 (1956) (buses); *Holmes v. City of Atlanta*, 350 U.S. 879 (1955) (public golf courses); *Mayor of Balt. City v. Dawson*, 350 U.S. 877 (1955) (public beaches and bathhouses); *Muir v. Louisville Park Theatrical Ass’n*, 347 U.S. 971 (1954) (parks).

discrimination, has been compared to South Africa under apartheid.¹⁸ Yet, when apartheid ended in South Africa, that country's Constitutional Court acknowledged: "A nation divided during a repressive regime does not emerge suddenly united when the time of repression has passed."¹⁹ True racial and national reconciliation in South Africa could not occur, according to the Court, until that country had as complete a picture as possible of what happened during the Apartheid era.²⁰

South Africans saw racial reconciliation as a way to *heal* wounds of the past and transform anger and grief into an understanding of government sanctioned repression.²¹ For, according to the Court, it is only by understanding the past that you create a "climate essential for reconciliation and reconstruction" of society.²² In contrast, the United States has never had a public venting of the economic, social and psychological consequences of slavery, and the legalized racial apartheid that followed emancipation. There has never been any *formal* attempt at racial reconciliation between black Americans and the dominant culture.

In this article, I explore the potential for racial reconciliation between black Americans and members of the dominant culture, because I believe that meaningful economic and non-economic black reparations must be based on the goal of racial reconciliation.²³ Further, as Eric Yamamoto notes, reparation awards must be cast in

18. See, e.g., GEORGE M. FREDERICKSON, *THE COMPARATIVE IMAGINATION: ON THE HISTORY OF RACISM, NATIONALISM, AND SOCIAL MOVEMENTS* 183-84 (1997); GEORGE M. FREDERICKSON, *WHITE SUPREMACY: A COMPARATIVE STUDY IN AMERICAN AND SOUTH AFRICAN HISTORY* 239-82 (1981); ANTHONY W. MARX, *MAKING RACE AND NATION: A COMPARISON OF SOUTH AFRICA, THE UNITED STATES, AND BRAZIL* 264-66 (1998).

19. *Azanian People's Org. v. President of the Republic of S. Africa*, 1996 (8) BCLR 1015 (CC), 1996 SACLX LEXIS 20, 56.

20. Racial and national reconciliation was one of the main objectives of South Africa's Truth and Reconciliation Commission. *Id.* at 3.

21. *Id.* at 7-8.

22. *Id.*

23. I consciously choose to focus on black reparations in discussing racial reconciliation rather than the larger issue of reparations for all forms of racial repression because major discussions of race in the United States political forum are still shaped by black-white racial divisions. Given that reparations traditionally are a political form of remediation, if meaningful reparations can be secured for the long history of race-based repression directed at people raced as black, then reparations for other migrant groups may be easier. I purposely avoid including indigenous people in my analysis because their reparations claims are more complex, and more clearly involve long-term conscious policies aimed at what the international community now characterizes as genocide. See generally Rennard Strickland, *Genocide-At-Law: An Historic and Contemporary View of the Native American Experience*, 34 U. KAN. L. REV. 713 (1986) (describing the role that the law has played in the Native-American experience).

moral, not solely legal, terms.²⁴ Reparations are political, not legal remedies.²⁵ Unless designed to transform the “attitudinal and social structur[es] [of the country] . . . , reparations may be illusory, more damaging than healing. No repair. Cheap grace.”²⁶ Thus, there always will be resistance to meaningful reparations.²⁷ This essay builds on Professor Yamamoto’s observations about resistance to black reparations.

Troubled by the vigorous resistance of many whites to two congressionally initiated proposals, a commission to study the impact of slavery and an apology for slavery,²⁸ I argue that a first step to racial reconciliation requires a better understanding of the reasons for white resistance to reparation discussions and moderate reparations like apologies. I conclude that racial reconciliation represents a framework for discussing black reparations in a way that both benefits all Americans and carries the potential for

24. *Racial Reparations*, *supra* note 9, at 518.

25. *Id.* at 497. In 1995, the United States Court of Appeals for the Ninth Circuit upheld a lower court’s dismissal of a claim by two groups of black American plaintiffs seeking in excess of \$100 million in reparations. *Cato v. United States*, 70 F.3d 1103, 1105-06 (9th Cir. 1995). The plaintiffs sought reparations for the enslavement of black Africans and their descendants, and for post-slavery race-based discrimination. *Id.* The plaintiffs also sought an acknowledgment of race-based discrimination and an apology. *Id.* The federal appellate court in *Cato* counseled the black litigants to seek redress from the legislature rather than the courts. *Id.* at 1106, 1110-11 (noting that reparations for Japanese-Americans interned during World War II was a political act and not legally required). Professor Yamamoto argues persuasively that framing reparations claims solely or primarily in legal terms ignores both the limitations of legal remedies and the existing political reality in the United States. *Racial Reparations*, *supra* note 9, at 479-80. He also discusses the reparations process and the extent to which other reparations movements use the Japanese American success as a “legal precedent,” a “moral compass,” or a “political guide.” *Id.* at 481. Nevertheless, he argues that lawsuits should not be abandoned even though there are no apparent legal remedies for the alleged moral wrong. *Id.* at 492. Instead, these lawsuits should focus on “bite-sized legal claims” as part of the overall reparation strategy. *Id.* Arguably, this is the intent of some lawyers involved in the black reparations movement. Harvard Law Professor Charles Ogletree, one of a group of prominent lawyers considering reparation lawsuits, indicated during an interview that there would be many different lawsuits raising various legal claims and relying on different legal theories. See ALEX P. KELLOGG, AFRICANA.COM, TALKING REPARATIONS WITH CHARLES OGLETREE (Aug. 28, 2001), at http://www.africana.com/articles/daily/index_20010828_1.asp (last visited Aug. 3, 2003).

26. *Racial Reparations*, *supra* note 9, at 520.

27. *Id.* at 487. Focusing on how to think about the potential and risk of the reparations process, Professor Yamamoto cautions that there are hidden dangers that need to be understood when strategizing about reparations. *Id.* at 482-83. He writes: “Reparations that repair are costly. Meaningful reparations entail change. Change means the loss of some social advantages by those more powerful. For these reasons, those charged with repairing the harm always resist.” *Id.* at 487 (citation omitted).

28. See *infra* notes 32-68 and accompanying text.

material change in race relations. Nevertheless, since societal anti-black bias is deeply entrenched in American society and cannot easily be minimized, I argue secondarily that in the interim, black Americans (and hopefully some white Americans) must take affirmative steps to heal themselves.

The second section of this article discusses two contemporary examples of societal resistance to black reparations: Representative John Conyers' unsuccessful efforts to establish a commission to study the impact of slavery and Representative Tony Hall's moderate reparation effort, a proposed government apology for slavery. Non-prejudiced whites,²⁹ I argue, resist black reparations efforts because they are ignorant of the nature and condition of African slavery, *de jure* segregation, and the continuing vestiges of public and private discrimination against people raced as black in the United States.

America fails to adequately teach history, therefore, most of the information people "learn" about past events comes from popular culture. The public's ignorance is reinforced by popular culture—literature, art, films, and more recently, television—that distorts the country's racial history. I use popular films, especially the plantation genre films, to illustrate this point. This over-reliance on popular culture as an informational source about United States history makes it difficult to clearly and concisely make the case that slavery has an impact on Americans today. We live in a sound-bite-sized culture with no effective way to communicate a long complex historical analysis necessary to convey this point.

Thus, in the third section, I argue that mere re-education of whites (and blacks) about the slavery and Reconstruction eras will not necessarily foster racial reconciliation. Few white Americans feel compelled to reconcile with black Americans based on actions grounded in the slavery and Reconstruction eras more than a century in the past. The present condition of black Americans, reparation opponents argue, is not directly related to their ancestor's slavery or *de jure* segregation. Most whites who resist reparations are not

29. University of Southern California Law Professor Jody Armour argues that a color-blind approach may unintentionally cause legal decision-makers to discriminate by allowing jurors and judges to act based, not on racial prejudices, but on stereotypical beliefs and unconscious biases, learned internal associations about social groups that are governed by automatic cognitive process. Jody Armour, *Stereotypes and Prejudice: Helping Legal Decisionmakers Break the Prejudice Habit*, 83 CAL. L. REV. 733, 756-57 (1995). He argues that non-prejudiced people can adopt a truly color-blind approach through conscious efforts to suppress an ingrained stereotype if reminded that they should not let racial bias effect their decisions. *Id.* Professor Armour also argues against allowing defendants in self-defense cases to exploit the racial prejudice of jurors in asserting the reasonableness of their belief in the need for self-defense. See generally Jody Armour, *Race Ipsa Loquitur: Of Reasonable Racists, Intelligent Bayesians and Involuntary Negrophobes*, 46 STAN. L. REV. 781 (1994).

racists, but simply do not know how contemporary inequality connects to past actions. This connection needs to be explained clearly, but as I indicated earlier, this is very hard to accomplish.

In addition, some argue, American individualism, a philosophy deeply imbedded in the American psyche, prevents whites from seeing themselves as a privileged racialized group.³⁰ American individualism helps to explain why white Americans resist acknowledging the extent to which black Americans live in an environment of persistent racial violence and intimidation that is directly related to anti-black sentiment rooted in the American slave system. White racial blindness or unconsciousness makes it more difficult for whites to feel any moral obligation to achieve meaningful racial reconciliation with black Americans. Yet, anti-black racism is a *collective inheritance* that negatively impacts the entire society. Thus, we are a nation in need of *racial healing*.

Harlon Dalton uses this phrase to describe a process where blacks and whites "candidly [confront] the past, expressing genuine regret, carefully appraising the present in light of the past, agreeing to repair that which can be repaired, accepting joint responsibility for the future, and refusing to be derailed by setbacks and short-term failure."³¹ Racial healing, however, requires both collective *and* personal action, a point I discuss in more detail in the final section of this article.

Expressing doubts about the willingness of American society, especially most white Americans, to engage in the self-reflection needed for collective healing, I focus instead on *self-healing*. Self-healing is an important component of the healing process. Specifically, I explore possible avenues of self-healing for black Americans, arguing that people raced as black in the United States must use their great political and economic weight to help other racially repressed groups within and outside the country. The success of these outreach efforts will help build a more positive self and group image. Political outreach efforts also enhance the image and sensitivity of all Americans to both their privileged position in the world and corresponding obligation to support meaningful, locally initiated social justice movements around the world.

II. CONTEMPORARY RESISTANCE TO REPARATIONS

A. *National Apology for Slavery*

In June, 1997, a dozen bi-partisan, white congress members

30. See *infra* notes 202-05 and accompanying text.

31. HARLON L. DALTON, RACIAL HEALING, CONFRONTING THE FEAR BETWEEN BLACKS AND WHITES 100 (1995).

sponsored a resolution calling for an apology for the enslavement of black Americans.³² Representative Tony Hall, who introduced the resolution, said that his purpose was not to “fix the lingering injustice resulting from slavery,” but rather to begin the reconciliation process.³³ The resolution was similar to the apology sent by the President to Japanese-Americans interned during War World II.³⁴ Yet, many people roundly condemned Representative Hall’s proposal.³⁵ Some saw an apology for slavery as meaningless, “a

32. See *Speaker Scoffs at Proposal for Apology on Slavery*, N.Y. TIMES, June 14, 1997, at A10. In the article, Tony P. Hall, an Ohio Representative, stated, “I hope this apology will be a start of new healing between the races.” *Id.*; cf. Barbara Crossette, *Rights Leaders Urge Powell to Attend U.N. Racism Conference*, N.Y. TIMES, July 11, 2001, at A9 (discussing civil rights leaders’ pressure on Secretary of State Colin Powell to attend an August, 2001 United Nations conference on racism, to show the world the level of importance that the United States places on the issue).

33. *Speaker Scoffs at Proposal for Apology on Slavery*, *supra* note 32, at A10.

34. President Roosevelt by executive order mandated the evacuation and removal of Japanese nationals and Japanese Americans. Exec. Order No. 9,066, 3 C.F.R. § 1092 (1938-1943). Two thirds of the 120,000 people of Japanese ancestry removed from their homes and interned by the government in 1942 were native-born American citizens. 133 CONG. REC. H7556 (daily ed. Sept. 17, 1987) (statement of Rep. Fish). In addition to the personal indignities that accompanied internment, Japanese Americans lost, among other material things, personal and real property, business and income, educational opportunities, and chattel (farm animals and pets). Westley, *supra* note 6, at 449. The internment of Japanese Americans was the first time that the federal government imposed a deprivation or restraint on *citizens* based solely on race or ancestry. Nanette Dembitz, *Racial Discrimination and the Military Judgment: The Supreme Court’s Korematsu and Endo Decisions*, 45 COLUM. L. REV. 175, 176 (1945). “History has shown that greed, prejudice and ‘race’ hatred had more to do with the internment of Japanese Americans than concern for national security.” Westley, *supra* note 6, at 449. After repeated defeats in the courts, political activism by Japanese Americans in the 1970s and 1980s resulted in the creation of the Commission on Wartime Relocation and Internment of Civilians. Natsu Taylor Saito, *Model Minority, Yellow Peril: Functions of “Foreignness” in the Construction of Asian American Legal Identity*, 4 ASIAN L. J. 71, 74 (1997) (citing PETER IRONS, JUSTICE DELAYED: THE RECORD OF THE JAPANESE AMERICAN INTERNMENT CASES 120 (1989)). The Commission questioned the rationale for the internment, but did not find that the government’s action was unconstitutional. Following release of the Commission’s report, a lawsuit was filed on behalf of persons interned requesting \$24 million in damages. The United States Supreme Court dismissed the case. *Hohri v. United States*, 482 U.S. 64, 76 (1987). Subsequently, Congress enacted the Civil Liberties Act of 1988 providing each former internee “symbolic” redress—a letter of apology from the President and \$20,000. Saito, *supra*, at 74.

35. Frank Rich, *Better Never Than Late*, N.Y. TIMES, June 22, 1997, at D15 (citing Rev. Jesse Jackson and then-Speaker of the House, Newt Gingrich). Specifically, Gingrich called the proposed resolution “emotional symbolism.” *Speaker Scoffs at Proposal for Apology on Slavery*, *supra* note 31, at A10. Historian Eric Foner is quoted as saying that substance, rather than symbolism, was what newly emancipated black slaves wanted. Rich, *supra*, at D15.

President Clinton’s creation of a commission on race in June 1997 generated similar debate. See James Bennett, *Clinton Plans Moves Aimed to Improve Nation’s Race*

dead end," or divisive.³⁶ Even some black Americans opposed the apology.³⁷ Apology supporters argued that "an apology could open floodgates for dealing with issues like reparations, . . . [and] that is necessary if the country is to move toward closure."³⁸ Although Representative Hall saw his proposed apology as a step toward racial reconciliation, he failed to appreciate that true reconciliation can only occur once society has faced its past and accepted responsibility for it.³⁹

President Clinton, who had just announced a national initiative on race, did not endorse the proposed apology.⁴⁰ White House Press Secretary, Michael McCurry, stated: "The President has . . . put that issue aside [because] . . . he believes we should really start the kind

Relations, N.Y. TIMES, June 5, 1997, at A22; Nancy Roman, *Gingrich Pooh-Poohs Clinton's Panel on Race*, WASH. TIMES, June 14, 1997, at A4; Thomas Sowell, *Talk is Cheap in National 'Dialogue' on Race*, CHI. SUN-TIMES, Jan. 4, 1998, at 38. The commission's final report was disappointing. A New York Times editorial announced a year later that any conversations on race "have long since drifted. Hampered by a White House that was well intentioned but wary of ugly confrontations, the full seven-member panel never met as a body in the Deep South or in the hard black ghettos of the urban North. The . . . people who came to talk in such places as Denver, Phoenix and San Jose tended to be civic activists. The bulk of Americans—those complacent about racism or indifferent to it—stayed home, as did the real racists." *Race, Memory and Justice*, N.Y. TIMES, June 14, 1998, at D14.

36. Rich, *supra* note 35, at D15 (citing Rev. Jesse Jackson & Representative Newt Gingrich).

37. Symbolic of the disagreement among black Americans are the comments of two leaders of black organizations. Gerald Reynolds, President of the Center for New Black Leadership, a conservative civil rights organization, saw an apology as an empty gesture that fails to address concrete problems like crime, teen pregnancy and inadequate public schools. Steven A. Holmes, *Idea of Apologizing for Slavery Loses Steam, At Least for Now*, N.Y. TIMES, Aug. 6, 1997, at A15. In contrast, National Urban League President, Hugh Price, considered an apology for slavery as a useful symbol, but like Reynolds realized that an apology alone "does not address the bottom line issues of inequality, which are rooted in the gaps in education and economic opportunity." *Id.*

38. Letter to the Editor from Dexter Wilburg, *Apology for Slavery Wouldn't Be Meaningless*, N.Y. TIMES, July 3, 1997, at A22.

39. See generally *Racial Reparations*, *supra* note 9, at 510-23 (arguing that an apology, unaccompanied by changes in the apologizing party's underlying belief system, becomes a self-serving endeavor).

40. Holmes, *supra* note 37, at A15. One political scientist contends that President Clinton considered supporting Representative Hall's proposed apology, but backed off when the polls showed that sixty-seven percent of whites, and only twenty-eight percent of blacks, opposed an apology. Claire Jean Kim, *Managing the Racial Breach: Clinton, Black-White Polarization, and the Race Initiative*, 117 POL. SCI. Q. 55, 71 (2002) (citing Frank Newport, *Whites Oppose Formal Apology for Slavery*, Gallup News Serv., Poll Releases, July 25, 1997, available at <http://www.gallup.com/poll/releases/pr970725a.asp> (last visited Sept. 8, 2003)).

of discussion . . . that's aimed at bringing Americans together."⁴¹ Instead, the President called on the nation to engage in a *conversation about race*.⁴² In announcing the creation of the President's Advisory Board on Race,⁴³ President Clinton said:

I want this panel to help educate Americans about the facts surrounding issues of race, to promote a dialogue in every community in the land to confront and work through these issues, to recruit and encourage leadership at all levels to help breach racial divides and to find, develop and recommend how to implement concrete solutions to our problems, solutions that will involve all of us in government, business, communities and as individualized citizens.⁴⁴

The government's role, according to the President, was to facilitate public dialogue, leaving the work of racial reconciliation up to the *ordinary* American. Yet, the President and his advisers closely monitored the initiative's advisory panel, ultimately writing its final report.⁴⁵ Further, there was no meaningful public dialogue, in part because advisory panel members argued amongst themselves about the centrality of anti-black racism to America's racial problems.⁴⁶

41. Holmes, *supra* note 37, at A15. Less than a year later, however, President Clinton, while visiting Uganda, said: "Going back to the time before we were even a nation, European-Americans received the fruits of the slave trade, and we were wrong in that." Katharine Q. Seelye, *Clinton Comment on Slavery Draws a Republican's Ire*, N.Y. TIMES, Mar. 28, 1998, at A9. Although not quite an apology, it was a partial acknowledgment, but even this modest comment generated much criticism by prominent white Americans. *Id.* (referring to comments by Republican Party Majority Whip, Representative Tom DeLay of Texas); see also R. W. Apple, Jr., *Clinton's Contrition*, N.Y. TIMES, April 1, 1998, at A12 (noting that some of the President's black American advisers did not support the apology). *New York Times* columnist, Frank Rich, who wrote about the presidential commission, illustrates the degree of white racial antagonism to almost any discussion of race in American. He writes: "Candid conversation about race . . . is easier decreed than had in a country that has already repressed memory of the stark racial gap revealed by the polar black and white reactions to both O.J. verdicts." Rich, *supra* note 35, A15. Recently, on visiting Gore Island, Senegal, President George W. Bush made a slightly stronger statement, condemning slavery and stating that "[y]ears of unpunished brutality and bullying and rape produced a dullness and hardness of conscience." *U.S. Presidents on Slavery*, BALT. SUN, July 9, 2003, at 2A. Yet, he too did not apologize for the "assault on . . . [black American's] culture and . . . dignity." *Id.*

42. William Powers, *Oh My!*, THE NEW REPUBLIC, Aug. 11 & 18, 1997, at 9.

43. Exec. Order No. 13,050, 62 Fed. Reg. 32,987 (June 13, 1997).

44. Powers, *supra* note 42, at 9. President Clinton reportedly "told aides that his goal in launching the initiative was to promote diversity as a means to enhance America's economic strength and moral standing in the eyes of the world." Kim, *supra* note 40, at 74.

45. Kim, *supra* note 40, at 71.

46. Powers, *supra* note 42, at 9. John Hope Franklin, a black American and noted historian, argued slavery's centrality to American racism while Angela Oh, a Los Angeles lawyer and activist within the Korean American community, disagreed,

Under President Clinton's initiative, government bore no responsibility for remedying the consequences for racism directed at black Americans. As a result, the presidential advisory panel made only modest recommendations, ignoring both the role of white racism in perpetuating anti-black bias and governmental responsibility for racial reconciliation.⁴⁷

It is unsurprising that the race initiative did not provide the necessary groundwork for a public discussion of black reparations. Politics got in the way. Some scholars even claim that the presidential initiative was a politically calculated move designed to boost Clinton's public approval ratings without alienating whites.⁴⁸ As Derrick Bell argued two decades ago, blacks only advance when their interests converge with the interests of the dominant society.⁴⁹

Partisan alignments and voter demographics provide another explanation for the reluctance of President Clinton and the Congress to engage in a sincere nation-wide discussion about racial reconciliation. The average American voter is older, white, and more conservative on racial issues.⁵⁰ This profile also describes the vast majority of our elected national representatives. Studies show that many older white Americans tend to be more racially biased than younger white Americans, because they lived a larger portion of their lives in an era when social norms on race were significantly worse

arguing that the black-white paradigm of race was not a useful way to discuss race. *Id.* Shelby Steele, agreeing with Professor Franklin, adds: "Other ethnic groups were never slaves in this country, so there is not the moral tension there. . . . Black and white relations are the true test of whether we as a nation are going to be able to overcome racism." Scott Shepard, *One Nation, Indivisible: The Answer May Not Simply Be Black-and-White*, Atlanta J. & Con., Aug. 3, 1997, at R1.

47. Kim, *supra* note 40, at 77. The final report focused on examples of past anti-black discrimination to minimize the risk of alienating whites. *Id.* at 76. The advisory panel's final report contained a recommendation that a permanent Presidential Council on Race be established to "monitor efforts and recommend policies to promote racial reconciliation." Steven A. Holmes, *Race Advisory Panel Gives Report to Clinton*, N.Y. TIMES, Sept. 19, 1998, at A7. This recommendation, however, was not adopted by President Clinton. Thus, the initiative on race proved to be an ineffective forum in which to discuss racial reconciliation.

48. Kim, *supra* note 40, at 74-75.

49. See, e.g., Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980).

50. In 2000 there were 94.2 million Americans aged 45 or older. In contrast, there were 116.7 million Americans between the ages of 18 and 44. Nevertheless, about 66% of Americans 45 and older voted while only 35% of Americans between the ages of 18 and 44 voted in the national election. U.S. Census, *Reported Voting and Registration, by Race, Hispanic Origin, Sex, and Age, for the United States* (Nov., 2000), available at <http://www.census.gov/population/socdemo/voting/p20-542/tab02.pdf> (last visited July 21, 2003).

than the present.⁵¹ Older Americans came of age in America during its period of dehumanizing race-based segregation. Notions of white supremacy have had years to accumulate in the subconscious of older white Americans. Therefore, older Americans have had longer exposure to negative racial images than younger Americans. Thus, the sum of their experiences may, at least unconsciously, affect their current beliefs and behavior. Other older white Americans may still feel the sting of the scars segregation left on their memories, and this sting may also, at least subconsciously, affect their perceptions of contemporary times.

Despite resistance to a formal apology for slavery by the national government, there have been apologies by governmental entities for anti-black racism. In 1997, President Clinton formally apologized to the families and survivors of the government-run Tuskegee experiments, where for decades government researchers withheld a cure from syphilitic black men to study the progression of the disease.⁵² Recently, the Mayor of Tulsa, Oklahoma, apologized for the city's actions toward black Tulsans during the 1921 race riot.⁵³ Similarly, the state of Florida apologized to former residents of Rosewood, Florida, an all-black town, for damages sustained when a mob of white rioters burned down the town in 1923.⁵⁴ These apologies, while long overdue, target small, particularly egregious

51. See HOWARD SCHUMAN, ET AL., RACIAL ATTITUDES IN AMERICA: TRENDS AND INTERPRETATIONS 8-53 (James A. Davis & John Modell eds., 1985); see generally Glen Firebaugh & Kenneth E. Davis, *Trends in Antiblack Prejudice, 1972-1984: Region and Cohort Effects*, 94 AM. J. SOC. 251 (1988) (attributing a decline in anti-black prejudice to attitudinal changes and cohort replacement, that is, the replacement of older, more prejudiced birth cohorts with younger, less prejudiced ones).

52. Charles Dervarics, *In Tuskegee Experiment's Wake: Apology, Fellowships and Grants Offered*, 14 BLACK ISSUES IN HIGHER EDUCATION 8 (1997).

53. Arnold Hamilton, *Tulsa Takes Strides to Heal Race Wounds*, THE DALLAS MORNING NEWS, Feb. 10, 2002, at 43A. The Oklahoma legislature established the Oklahoma Commission to Study the Tulsa Oklahoma Race Riots of 1921. Brent Staples, *Unearthing A Riot*, N.Y. TIMES, Dec. 19, 1999, § 6 (Magazine), at 64. In 2001 the Commission concluded that the 1921 race riot worsened when city officials hastily deputized white citizens as police officers and these "temporary police" proceeded to loot, torch and destroy virtually all the businesses and homes in the prosperous black Tulsa community called Greenwood. Hamilton, *supra*, at 43A. Although the State of Oklahoma admitted that whites were responsible for the action, the legislature elected not to award the remaining survivors financial reparations. Instead, the State gave each survivor a gold-plated medal with the state seal. Richard Lacayo, *The Rule of Lawlessness: Two Chilling Books Shed Light on the Brutality That Was Essential to America's Old Racial Caste System*, TIME, Jan. 28, 2002, at 8.

54. Lori S. Robinson, *Righting a Wrong; Among Black Americans, the Debate is Escalating Over Whether an Apology for Slavery is Enough*, SEATTLE POST-INTELLIGENCER, June 29, 1997, at E1. Seventy-two years later, the state legislature awarded the nine surviving town members \$150,000 each and gave monetary awards to 143 descendants of that black community. *Id.*

incidents, and are somewhat analogous to the president's apology to Japanese Americans interned during World War II. They suggest a momentary lapse by government, not the type of sustained assault on black Americans supported or facilitated by national, state, and local governments, and reinforced by private conduct.

Similarly, in recent years, even a few private entities have issued apologies. During the celebration of its 150th anniversary in 1995, the Southern Baptist Convention overwhelmingly passed a resolution to "repent of racism of which we have been guilty" and to apologize to and ask forgiveness from "all African-Americans."⁵⁵ This resolution was significant because the Southern Baptist is "America's largest Protestant denomination [and was] . . . founded in large part in defense of slavery."⁵⁶ Bell's interest convergence theory might explain this apology.

Rather than view the Southern Baptist's apology as a hopeful sign of racial reconciliation, a cynic might point to the increasing numbers of black congregations in the denomination, arguing that the apology was in the group's best interest. Similar motives might be attributed to the apologies in July 2000 by *The Hartford Courant*, a Connecticut newspaper, for running advertisements for slaves in the eighteenth and nineteenth centuries; and by Aetna Inc., an insurance company,⁵⁷ "for profiting from slavery by issuing insurance policies on slaves in the 1850s."⁵⁸

55. Gustav Niebuhr, *Baptist Group Votes to Repent Stand on Slaves*, N.Y. TIMES, June 21, 1995, at A1.

56. *Id.* The story continues:

The resolution was also striking because it addressed the very schism over slavery that created the denomination in the first place. In a move that foreshadowed the secession by Southern states on the eve of the Civil War, the denomination was formed in 1845 by Southern churchmen who broke from northern Baptists after a national Baptist agency refused to appoint a slaveholder as a missionary. . . . The resolution stated that "many of our Southern Baptist forebears defended the 'right' to own slaves" and that in this century, many in the denomination either failed to support or actively opposed efforts by black Americans to secure their civil rights.

Id.

57. Other insurance companies benefited as well. For example, 339 of the first 1,000 insurance policies issued by the New York Life Insurance Company covered the lives of black slaves in Maryland and Virginia. Lewin, *supra* note 8, at A15.

58. A poll conducted by the Foundation for Ethnic Understanding found that although a majority (fifty-eight percent) of Jewish interviewees opposed black reparations for slavery, Jewish interviewees were more likely than other whites to support black reparations. Informed of the poll results, Raymond Winbush, director of the Race Relations Institute at Fisk University, a historically black college in Nashville, said: "I find it ironic that so many Jews are opposed to reparations, since they received more reparations in the last fifty years than any other group." The Foundation for Ethnic Understanding found Jewish interviewees almost evenly split on the question of an apology for legalized black slavery. "Rabbi Marc Schneier,

Apologies can be problematic, especially when, like the apologies by the Southern Baptist Convention, Aetna and *The Hartford Courant*, there is no educational foundation for the action. Representative Hall's proposed apology seems premature because an uninformed apology for slavery might let American society off the hook and allow the country to close the door on slavery without racial reconciliation.⁵⁹ An uninformed apology also would be meaningless to the contemporary condition of black Americans. Reflecting this perspective, in May 2001, *The Philadelphia Inquirer*, that city's main daily newspaper, in two full-page editorials, called for the creation of a national reparations commission.⁶⁰

B. *Reparations Study Commission*

The idea of a reparations study commission is not new. A study committee preceded the award of reparations to Japanese Americans.⁶¹ Even the suggestion of a commission to study black reparations is not new. In 1989, Representative John Conyers, a black American from Michigan, introduced a bill to establish a commission to study whether "any form of compensation to the descendants of African slaves is warranted."⁶² He has reintroduced

founder of The Foundation for Ethnic Understanding, said that the level of support for reparations among Jews has more to do with the inability of the black community to 'articulate a clear position on the issue.'" Jamal E. Watson, *Blacks, Jews Still To Have Rifts; Reparations for Slavery Said to Be an Issue*, BOSTON GLOBE, Aug. 6, 2001, at A3; see also Alvin Darby, *Apologies for Slavery*, N.Y. TIMES, July 13, 2000, at A28 (criticizing the apologies in a letter to the editor); Deborah Kong, *Some Blacks Don't Want Reparations*, CHATTANOOGA TIMES FREE PRESS, May 16, 2002, at A5 (citing reparation opponents, Joe Hicks, executive director of the Center for the Study of Popular Culture, a conservative think tank, and Niger Innis, spokesperson for the Congress of Racial Equality); *supra* note 10.

59. A letter to the *New York Times* written in response to Representative Hall's proposal reads: "what is the point of an apology if certain people still have ill will and feelings toward black people in their hearts?" Darby, *supra* note 58.

60. *Forward on Race—Together*, PHILA. INQUIRER, May 20, 2001, available at http://inquirer.philly.com/opinion/edweb_rep01.html; *Justice and Reconciliation*, PHILA. INQUIRER, May 21, 2001, available at http://inquirer.philly.com/opinion/edweb_rep01.html. For a discussion of how the *Philadelphia Inquirer* reached its decision to publish the two-part editorial, see Lillian Swanson, *How the Inquirer Reached the Decision to Print Editorials on Reparations*, PHILA. INQUIRER, May 28, 2001, at A10. Other cities making similar recommendations for a reparation study commission are Chicago, Detroit, Cleveland and Dallas. Richardson, *supra* note 10 at 29A.

61. See *supra* note 34 and accompanying text.

62. H.R. 3745, 101st Cong. § 3(b)(7)(C) (1st Session 1989). His first effort read in part:

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

some version of this bill every year since 1989,⁶³ but the bills never make it out of the House Judiciary Committee for debate on the floor of Congress.⁶⁴ But even assuming Representative Conyers's efforts prove successful, there are limitations on what a reparation commission can accomplish.

Professor Yamamoto acknowledges that while the Japanese American reparations movement "educated many about the historical injustice, reparations [projected] a feeling that 'now the system works,' [and the subsequent government commission and resulting apology] also let the government off the hook so that it no longer needed to vigorously oppose racism against Asian Americans."⁶⁵ This is one danger of simply cutting a check for reparations. Like pre-trial court settlements, the claim is considered extinguished without the facts being aired and the conflict understood. Thus, racial angst and inequality would likely remain.

Professor Yamamoto concedes that it is too early to determine whether the award of reparations will bring about racial reconciliation between Japanese Americans and other Americans.⁶⁶ It also is unclear whether most Americans know any details about the internment or even that the federal government paid reparations. Nevertheless, continued racial violence aimed at Japanese Americans, Japanese visitors, and other Asians, suggests that lasting racial reconciliation between the dominant society and Japanese Americans has not been realized.⁶⁷

institution of slavery, subsequent de jure and de facto racial and economic discrimination against African Americans, and the impact of these forces on living African Americans, to make recommendations to the Congress on appropriate remedies, and for other purposes.

H.R. 3745, 101st Cong. (1st Session 1989); see also OLIVER & SHAPIRO, *supra* note 10, at 188 (noting that Representative Conyers has introduced the bill each year).

63. See Chris K. Iijima, *Reparations and the "Model Minority" Ideology of Acquiescence: The Necessity to Refuse the Return to Original Humiliation*, 40 B.C. L. REV. 385, 389 n.9 (1998); Eric Bailey, *Slave's Sons Seek to Heal Wounds With Reparations*, L.A. TIMES, Sept. 8, 2002, § 2, at 2; Jonathan Tilove, *Slavery Payback Proposal Moves to Forefront; Once Far-Fetched, Idea Being Taken Seriously*, TIMES-PICAYUNE, Sept. 29, 2002, at 1.

64. In 1991 he even managed to get nineteen other House members to co-sponsor the bill. H.R. 1684. 137 CONG. REC. H2134 (1991). That same year a bill introduced in the Massachusetts State Legislature requested reparations for slavery, the slave trade, and "invidious discrimination against people of African descent born or residing in the United States." *Id.* The bill was introduced by State Senator William Owens. BELL, *supra* note 7, at 51 n.4.

65. *Racial Reparations*, *supra* note 9, at 496.

66. See *id.* at 501.

67. The National Asian Pacific American Legal Consortium (NAPALC) monitors anti-Asian violence and issues an annual "audit" of violence against Asian Pacific Americans. NAPALC, *Executive Summary of 2000 Audit of Violence Against Asian*

More importantly, the strong and vocal public resistance to Representative Hall's proposed apology by many white Americans is especially troubling, as is Congress's resistance to a reparations study commission. This resistance suggests that some whites remain unapologetic for black slavery.⁶⁸ Therefore, to persuade society of the need to engage in the process of racial healing, we need to better understand the reasons for white resistance to racial reconciliation efforts with black Americans. In the next section I argue, in explaining white resistance to black reparation proposals, that America's long history of anti-black bias and explicit endorsement of white supremacy has been deracinated, normalized and reinforced by popular films. The history portrayed in these films, when combined with white racial transparency, unconscious anti-black bias and overt white supremacy, makes black Americans appear unworthy of reparations.

III. POPULAR CULTURE'S REFLECTION OF ANTI-BLACK BIAS

Looking specifically at the black reparations movement in the United States, Professor Yamamoto argues that any group seeking reparations must attract media attention and community support for broader reparations claims by telling "counter-narratives to dominant stories about the racial order."⁶⁹ This strategy broadens the discussions of what needs repairing, and increases the potential for

Pacific Americans, available at http://www.napalc.org/literature/annual_report/2000.htm (last visited Sept. 19, 2003) [hereinafter *Executive Summary*]. Their 2000 audit found 392 reported incidents against Asian Pacific Americans, a nineteen percent decrease in hate crimes against Asian Pacific Americans. NAPALC, *2000 Audit of Violence Against Asian Pacific Americans*, at 12, available at http://www.napalc.org/literature/annual_report/9-11&2000_download.htm (last visited Sept. 19, 2003); *Executive Summary*, *supra*, at 1. NAPALC attributes this decline to the overall decline in violent crimes nationally from 1999 to 2000. *Executive Summary*, *supra*, at 1. Nevertheless, NAPALC found that four states, Connecticut, Michigan, Nevada, and Wyoming, each experienced more than a fifty percent increase in violence targeting Asian Pacific Americans. *Id.* Violence directed against Asian Pacific Americans increased dramatically across the nation after the September 11, 2001 terrorist attack on the United States. NAPALC, *Backlash: When America Turned on Its Own: A Preliminary Report to the 2001 Audit of Violence Against Asian Pacific Americans*, available at http://www.napalc.org/literature/annual_report/9-11&2000_download.htm. For a discussion of hate crimes directed at Asian Americans, including Japanese, see Terri Yuh-lin Chen, Comment, *Hate Violence as Border Patrol: An Asian American Theory of Hate Violence*, 7 *ASIAN L.J.* 69 (2000).

68. See, e.g., Diana Jean Schemo, *Ad Intended to Stir Up Campuses More Than Succeeds in Its Mission*, N.Y. TIMES, Mar. 21, 2001, at A1 (discussing the advertisement conservative author David Horowitz placed in university newspapers opposing reparations saying that "blacks do not deserve redress because white Christians ended slavery, and that rather than getting compensation, black Americans owe the country for the freedom and prosperity they enjoy").

69. *Racial Reparations*, *supra* note 9, at 492.

meaningful racial healing.⁷⁰ In this section, I explore how popular culture, specifically film, tells a powerful, but often inaccurate and distorted, anti-black narrative using material widely distributed and familiar to most Americans.

Perhaps the real legacy of slavery is the continuing harm to black Americans that stems from the conscious distortion and misrepresentation of the slavery and Reconstruction eras in American history, literature, theater, and film. The distortions and misrepresentations are essential components of a specific anti-black bias. This is not a unique theory; recently other scholars have made similar claims.⁷¹ My argument, however, focuses on how popular culture in the United States about the Civil War and Reconstruction, combined with *de jure* segregation and *de facto* practices, perpetuate and reinforce anti-black bias.

America, like most countries, is reluctant to face up to this unflattering past and the present consequences of black slavery followed by *de jure* race-based segregation.⁷² In place of the truth we have substituted a powerful self-soothing mythical past. The acceptance of this mythical past as historical fact makes resistance to facing our past and continuing racial injustices intractable.

A. *Film as a Vehicle of Anti-Black Propaganda*

*"For obscure reasons, narrative works considered landmarks in American culture for technical innovation and/or popular success have often importantly involved the portrayal of African Americans."*⁷³

Since the early twentieth century, film has been a powerful

70. See *id.* at 493.

71. See, e.g., DAVID W. BLIGHT, *RACE AND REUNION: THE CIVIL WAR IN AMERICAN MEMORY* (2001) (discussing how the unity of white America after the Civil War came about through increasing racial segregation and reconstructing reasons for the Civil War); BRUCE CHADWICK, *THE REEL CIVIL WAR: MYTHMAKING IN AMERICAN FILM* (2001) (analyzing Hollywood's treatment of the Civil War).

72. "Perhaps poet Robert Penn Warren put it best when he wrote that people really don't want to remember their actual past if it had defects, that they have to manufacture a new one, . . . they *need* a new one, . . . [W]e need to believe we were good and righteous before, even if we were not, in order that we can be good and righteous today and tomorrow." CHADWICK, *supra* note 71, at 13.

73. Clyde Taylor, *The Re-Birth Of The Aesthetic In Cinema*, in *THE BIRTH OF WHITENESS: RACE AND THE EMERGENCE OF U.S. CINEMA* 15 (Daniel Bernardi ed., 1996). He cites three films as examples, *THE JAZZ SINGER* (Warner Bros. 1927), "known as the 'first' sound film"; *GONE WITH THE WIND* (Selznick Int'l Pictures 1939), the first "technicolor historical epic"; *SONG OF THE SOUTH* (Walt Disney Pictures 1946), believed to be the first full-length technicolor animated film that used cartoon and human characters; and a television series, *Roots* (ABC television broadcast Jan. 23-30, 1977), whose "massive reception . . . has been credited with ensuring the future of the mini-series as a television genre." *Id.*

conveyer of myth posing as American history. "Like the newspaper editor in *The Man Who Shot Liberty Valance*, [myth-makers] ignored the facts and published the legend because they knew people wanted the legend."⁷⁴ Film was an essential part of the nationhood redefining process at the beginning of the twentieth century. Throughout that century, film, along with other mass media, was the site or "arena[] for conflicting interest groups to quarrel over the definition of the 'nation.'"⁷⁵ Although it is doubtful that exposure to fiction film changes viewer attitudes, fiction films may change an audience's behavior.⁷⁶ Documentary or nonfiction film, some scholars speculate, can have some effect on audience's attitudes.⁷⁷ Without question, film "*reflect[s] and keep[s] in circulation values and behaviors associated with a particular nation.*"⁷⁸

Especially during the first half of the twentieth century, film narratives perpetuated and reinforced anti-black attitudes by masquerading as history.⁷⁹ Historians, journalists, and novelists portrayed the antebellum South as "a harmonious world that revolved around agriculture and the plantation system, a world organized and run efficiently by white aristocrats. . . . [T]he aristocrats, beneficiaries of the slavery system, not only provided decent lives for the slaves, but also organized trade in such a way that the small farmers who did not have slaves could profit, too."⁸⁰

This mythical vision of the South was not new,⁸¹ but gained increased visibility with the rise of the publishing industry in the 1890s.⁸² In novels from the 1830s to 1915, some of the country's best writers "presented the slavery system as acceptable for its time and believed that Southerners had to defend it."⁸³ Historians also

74. Taylor, *supra* note 73, at 16.

75. Alan Williams, *Introduction*, FILM AND NATIONALISM 4 (Alan Williams ed., 2002).

76. See *id.* at 6-7. ("Fiction films can, probably . . . change *behaviors*—make people more violent, more inclined to go shopping, more sexually active—more effectively than they can change *ideas*.").

77. See *id.* at 7. However, there is no firm evidence that documentary or nonfiction film is an effective medium for changing audience attitudes. *Id.*

78. *Id.* at 8.

79. See *infra* notes 117-43 and accompanying text.

80. CHADWICK, *supra* note 71, at 24.

81. As early as 1873, Northern magazines reflected this view. *Id.* at 25. The notion of the Southern cavalier even pre-dates the Civil War by approximately thirty years. *Id.* at 27.

82. *Id.* at 28. "The first best-seller lists came out in the 1890s and by 1900 record numbers of books were being published. More books were published in 1914, the year before the release of *The Birth of a Nation*, than in any other year until 1953." *Id.*

83. *Id.* at 29.

contributed to national myths about slavery and Reconstruction. Notable among this group was Columbia University history professor William Dunning, who wrote *Reconstruction, Political and Economic, 1865-1877*.⁸⁴ Dunning, a Southerner by birth, argued that Reconstruction failed due to black incompetence and irresponsible behavior encouraged by "unscrupulous abolitionists."⁸⁵ According to Dunning, the entire South suffered as a result, and segregation and Jim Crow laws were needed to rectify the situation.⁸⁶

Thus, Hollywood filmmakers did not have to create myths about the antebellum South and Reconstruction. They already existed for some time and "had been built so carefully in so many places and in so many ways, that [they] seemed real to most Americans."⁸⁷ The next section explores how the plantation film genre perpetuated and reinforced especially powerful anti-black propaganda about slavery and the Reconstruction era.

B. Birth of A Nation and Plantation Myth Films

*"Myths are hard to change."*⁸⁸

*"That the Confederacy fought for slavery and the destruction of the United States as one nation cannot be mentioned, for that would hinder reconciliation and reunion."*⁸⁹

The Civil War was a defining event in United States history.⁹⁰ Following unification with the former confederate states at the end of the Civil War, the United States was reborn as a different nation.⁹¹

84. *Id.* at 30.

85. *Id.*

86. *Id.* In discussing William Dunning, Chadwick writes that he also "defended Jim Crow laws and the Black Codes on the grounds that 'the freedmen were not on the same social, moral and intellectual plane with the whites,' and that Jim Crow laws 'recognized . . . them as a separate class in the civil order.'" *Id.* at 30-31.

87. *Id.* at 35.

The only way mythmakers could wash the bitterness between North and South and bring about reunification was to erase the fundamental cause of the war and all its death and destruction – slavery. The historical writings and popular culture of the late nineteenth century began this erasure, but it was the all-powerful film medium that, in thousands of darkened movie houses across the Republic, most effectively absolved the South of any blame for slavery.

Id. at 14.

88. *Id.* at 15. "Together, literature and theater created more than enough lore about the Civil War . . . plots for the new silent movies." *Id.* at 34.

89. James M. McPherson, *Kleig Lights and Magnolias*, N.Y. TIMES., Sept. 30, 2001, § 7 (book review), at 19 (reviewing Bruce Chadwick's THE REEL CIVIL WAR).

90. BLIGHT, *supra* note 71, at 4.

91. *Id.* at 18-30; Thurgood Marshall, *Commentary: Reflections on the Bicentennial of the United States Constitution*, 101 HARV. L. REV. 1, 2-4 (1987) (arguing that the

Unfortunately, anti-black attitudes persisted despite the end of slavery. These attitudes are reflected in the legal decisions of the United States Supreme Court starting in the late 1870s. As part of an agreement that allowed Rutherford B. Hayes to be elected President in 1876, the Republican party, to appease southern Democrats, agreed to withdraw federal troops from the former Confederate states.⁹² With the withdrawal of federal troops went federal protection of black Americans. According to southern historian C. Vann Woodward, “[j]ust as the Negro gained his emancipation and new rights through a falling out between white men he now stood to lose his rights through the reconciliation of white men.”⁹³

When the Civil War ended, the southern states, in an attempt to reassert the old regime of white dominance, instituted measures designed to thwart the advances made by black Americans following emancipation from slavery.⁹⁴ Black litigants challenged these measures, usually unsuccessfully.⁹⁵ The Court’s response to their

Civil War Amendments resulted in a reconstructed Constitution); *see also* United States v. Morrison, 529 U.S. 598, 625 (2000); Gen. Motors Corp. v. Tracy, 519 U.S. 278, 311 (1997) (“It is true, of course, that in some peculiar circumstances state tax classifications facially discriminating against interstate commerce may violate the Equal Protection Clause even when they pass muster under the Commerce Clause.”) (citing Met. Life Ins. Co. v. Ward, 470 U.S. 869, 874-83 (1985)).

92. This incident is popularly known as the Hayes-Tilden Compromise of 1876.

93. C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* 53 (1955).

94. For example, historian James M. McPherson writes that “black literacy increased from 10 percent in 1860 to 30 percent in 1880” and that school attendance for black children “increased from 2 to 34 percent” over the same period. BELL, *supra* note 7, at 38. These gains, while modest when compared to the overall school attendance for white children (“60 to 62 percent”) are significant for a population, the bulk of whom were just fifteen years out of slavery. *Id.* Historian Robert Engs, writing about blacks in Hampton, Virginia, points out that so strong was the enthusiasm and ability of black freemen that by 1864 it was believed that “a larger portion of the colored population of Eastern Virginia [could] read than of the white.” ROBERT FRANCIS ENGS, *FREEDOM’S FIRST GENERATION: BLACK HAMPTON, VIRGINIA, 1861-1890*, at 55 (1979) (quoting Captain C.B. Wilder, a white Connecticut abolitionist who oversaw many aspects of Negro affairs in Hampton).

95. *See, e.g.*, Giles v. Harris, 189 U.S. 475 (1903) (concluding that federal courts lack the power to order state officials to register citizens who allege a wrongful denial of the franchise by a state constitution); Cumming v. Richmond County Bd. of Ed., 175 U.S. 528 (1899) (applying the doctrine from *Plessy* and holding that the separate but equal principle is not violated when a black public high school, but not a white public high school for girls, was closed to enable the county to open four primary schools for blacks); Plessy v. Ferguson, 163 U.S. 537 (1896) (upholding state mandated racial segregation and announcing the separate but equal doctrine); The Civil Rights Cases, 109 U.S. 3 (1883) (invalidating federal law protecting against race-based discrimination in public accommodations); United States v. Harris, 106 U.S. 629, 644 (1882) (holding that the Constitution does not confer on Congress “the power to enact a

pleas for equality and justice fell on deaf ears. Despite three constitutional amendments designed to grant blacks full citizenship, the courts of the post-Civil War period, including the Supreme Court, were "unable to safeguard black rights."⁹⁶ Courts at every level were complicit in the denial of economic liberty and citizenship rights to blacks.⁹⁷

During the last quarter of the nineteenth century, black citizens were abandoned by the law as a sacrifice to white regional reconciliation. Further, their loss of economic and political freedom was reinforced through wholesale and brutal violence.⁹⁸ "Americans faced an overwhelming task after the Civil War and emancipation: how to understand the tangled relationship between two profound ideas—healing and justice." But the strong anti-black bias that underlay racial assumptions and power in nineteenth-century America prevented these two aims from developing.⁹⁹

Historian and film scholar Bruce Chadwick writes that Americans have no real understanding of Civil War history because it has been revised so often.¹⁰⁰ Most Americans still do not understand how the Civil War "changed the course of American life."¹⁰¹ For a great many Americans knowledge of the Civil War comes primarily from film or television.¹⁰² D.W. Griffith's controversial and critically acclaimed film, *The Birth of A Nation*,¹⁰³

law which would punish a private citizen for an invasion of the rights of his fellow citizen"); *United States v. Cruikshank*, 92 U.S. 542 (1875) (holding that the 14th Amendment does not reach private acts of race-based discrimination); *United States v. Reese*, 92 U.S. 214 (1875) (holding that the 15th Amendment does not confer a right to vote, but only the right not to be discriminated against in the exercise of the franchise based on race). Justice Oliver Wendell Holmes wrote that if blacks were being disenfranchised by the white power structure, there was nothing the Court could do to restore blacks' political rights. *Harris*, 189 U.S. at 488; see also *James v. Bowman*, 190 U.S. 127 (1903) (holding that the 15th Amendment only applies to state actions that discriminate against the franchised based on race); see generally David E. Bernstein, *The Law and Economics of Post-Civil War Restrictions on Interstate Migration by African-Americans*, 76 TEX. L. REV. 781, 827 (1998) (arguing that emigrant agent laws "played a large role in institutionalizing economic discrimination against African-Americans").

96. See BELL, *supra* note 7, at 35.

97. See *id.* at 35-44, 90-91.

98. "The purpose of racism is to control the behaviour of white people, not black people. For blacks, guns and tanks are sufficient." Cedric J. Robinson, *In The Year 1915: D.W. Griffith and the Whitening of America*, 3 SOC. IDENTITIES 161, 161 (June 1997) (quoting Otis Madison, *Confronting Racism*, Address at Santa Barbara, Cal. (Jan. 20, 1997)).

99. BLIGHT, *supra* note 71, at 3 (emphasis deleted).

100. CHADWICK, *supra* note 71, at 6.

101. *Id.*

102. *Id.*

103. THE BIRTH OF A NATION (D.W. Griffith Corp. & Epoch Producing Corp. 1915).

one of the oldest and most influential examples of cinematic racial myth-making, has a special place in American film history.¹⁰⁴ Recently, the American Film Institute (AFI) ranked *The Birth of a Nation* forty-fourth on its list of the top 100 films of “all time.”¹⁰⁵

The timing of the film’s initial 1915 release adds to its significance. The year 1915 marked the fiftieth anniversary of the Civil War’s end.¹⁰⁶ Release of the film also stimulated the rebirth of the Ku Klux Klan and organized black protest.¹⁰⁷ More importantly, *The Birth of A Nation* reflects the reassertion of the *original* understanding of the United States as a white nation in which blacks, now citizens, had no real rights. It also was a counter narrative to Harriett Beecher Stowe’s powerful slave story, *Uncle Tom’s Cabin*.¹⁰⁸

The Birth of a Nation focuses on two families, the Stonemans in

104. *The Birth of a Nation* was the first American film to get a \$2 admission, the equivalent of about thirty-three dollars today. RICHARD A. MAYNARD, *THE BLACK MAN ON FILM: RACIAL STEREOTYPING* 25 (1974); see also Chadwick, *supra* note 71, at 132 (“Local theater managers quickly realized that *Birth* was so popular that they could charge just about whatever they wanted – with ticket prices averaging one dollar and in some places two dollars.”). It also was the first film shown in the White House. The film played for over a year in New York City, thirty-five weeks in Chicago and twenty-two weeks in Los Angeles. In fact, the film grossed more in Northern and Western cities than in the South. “New York’s Liberty Theatre, which had 1,246 seats, alone reported that in its forty-eight weeks it had 620 showings, which grossed \$616,000.” *Id.* *The Birth of a Nation* is one of the top money-makers in the history of American cinema. MAYNARD, *supra*, at 25. The film “made \$18 million by the start of the talkies. [It was the most profitable film for over two decades, until Disney’s *Snow White and the Seven Dwarfs* (1937).]” Tim Dirks, *The Birth of A Nation* (movie review), at <http://www.filmsite.org/birt.html> (last visited Aug. 7, 2003). By 1949, it was estimated that the film had grossed more than \$50 million, almost one *billion* dollars in today’s currency. CHADWICK, *supra* note 71, at 132 (citing a Feb. 9, 1949 *Variety* estimate); cf. Robinson, *supra* note 98, at 174 (estimating a gross revenue of \$60 million by 1917).

105. The AFI justified the inclusion of *The Birth of a Nation* on its list because the film “was the first of the great American epic films and a landmark in the development of the motion picture.” American Film Institute, *AFI Announces 100 Greatest American Movies of All Time: Citizen Kane #1*, available at <http://www.afi.com/tv/movies.asp> (last visited Aug. 7, 2003).

106. Robinson, *supra* note 98, at 164. In addition, Woodrow Wilson, a southerner, had been elected president three year earlier. He was the first President from the South since before the Civil War. Jack Johnson, the first black heavyweight boxing champion, was defeated by Jess Willard, a white man. Haiti, a black-ruled nation, was invaded by the United States. *Id.*

107. *Id.* “[I]n response to *Birth of a Nation*, the six-year-old NAACP launched mass demonstrations, and the Association for the Study of Negro Life and History was initiated Finally, the phenomenal success of *Birth of a Nation* . . . brought the independent[] [filmmakers] to their definitive triumph over Edison’s Trust, thus establishing the governing structure of the movie industry for the next decade.” *Id.*

108. HARRIETT BEECHER STOWE, *UNCLE TOM’S CABIN* (Bantam Classics, 1983) (1852).

the North and the Camerons in the South. The families, symbolic of the nation, initially unite through the friendship of their sons and the sons' romantic attachments to each family's daughter, but are divided by the Civil War. In *The Birth of a Nation*, Griffith frames the Civil War as a conflict over southern sovereignty.¹⁰⁹ Both families lose sons to the War, with the Camerons suffering greater loss of family and property. Just like the nation on which it is modeled, the Stoneman and Cameron families reunite and reconcile after the War.

Although arguably a film about two white families, blacks are the heart of the film's narrative. For example, at the beginning of the film Griffith positions a title card that reads: "The bringing of the African to America planted the first seed of disunion."¹¹⁰ This title card is followed by a scene of a white Christian minister administering the benediction on a kneeling slave at a slave auction. Thus, Griffith's positioning the title card and scene "ellipsed the brutality and wrenching pain of the slave trade [and] the tyranny of the mass appropriation of African life and labour."¹¹¹ According to Griffith's version of American history, it is the African slave, not the slave's kidnapper, seller or buyer, who is the source of the *problem* plaguing the nation.

The Camerons, slave owning plantation gentry, live in pastoral, fictional Piedmont, South Carolina "where life runs in a quaintly way that is to be no more."¹¹² They are surrounded by black slaves working as house servants or field laborers.¹¹³ To reinforce the myth of the happy black slave, Griffith includes a scene where black slaves on the Cameron plantation happily sing and dance during a *break* from work.

Blacks also are present in the Stoneman household, but under

109. THE BIRTH OF A NATION, *supra* note 103. Foreshadowing the Civil War, a title card reads: "The Gathering Storm. The power of the sovereign states . . . is threatened by the new administration." In the scene following this card, Griffith shows the Cameron patriarch reading to his family and the two Stoneman brothers from the Charleston newspaper. The camera focuses in on a headline that reads: "If the North Carries the Election, the South will Secede." In another distortion of history, while Stoneman thinks of Lincoln's death as a chance to increase his political power, the Camerons in the South are shown saying: "Our best friend is gone. What is to become of us now!" *Id.* (quoting a title card from the film). Blight, quoting from poet Walt Whitman's poem *When Lilacs Last in the Dooryard Bloomed*, written to memorialize Lincoln's death, reminds us that Lincoln's assassination came at this country's new beginning. BLIGHT, *supra* note 71, at 29-30. He also points out that large numbers of former slaves, in tears and silence, "gathered in front of a store window" that contained a picture of Lincoln. *Id.*

110. THE BIRTH OF A NATION, *supra* note 103.

111. Robinson, *supra* note 98, at 167.

112. THE BIRTH OF A NATION, *supra* note 103 (quoting a title card from the film).

113. *Id.*

different circumstances. Austin Stoneman, the family patriarch, an abolitionist congress member (a thinly veiled reference to the radical Republican leader and anti-slavery crusader, Thaddeus Stevens, a Senator from Pennsylvania), employs a free *mulatto*¹¹⁴ housekeeper, Lydia Brown, and has a *mulatto* protégé, Silas Lynch.¹¹⁵ As the story evolves, Griffith offers two contrasting vision of black Americans: blacks as happy, loyal, and subservient slaves, and free blacks, especially *mulattos*, as conniving, deceitful, and licentious.¹¹⁶

Griffith reinforces the documentary quality of *The Birth of a Nation* by using what he calls “historical facsimile.”¹¹⁷ The suggestion of historical accuracy invoked throughout the film takes on greater significance in the second part of the film, which begins with four consecutive title cards. The first card reads: “This is an [sic] historical presentation of the Civil War and Reconstruction Period,

114. *Id.* I italicize this term to remind the reader that *mulatto* is a problematic term, derived from the Spanish *mulatto* meaning young mule, a sterile hybrid. See JUDY SCALES-TRENT, *On Being Like a Mule*, in NOTES OF A WHITE BLACK WOMAN: RACE, COLOR, COMMUNITY 99-100 (1995) (describing the negative meanings behind the use of the term *mulatto*).

115. THE BIRTH OF A NATION, *supra* note 103.

116. *Id.* Griffith, reflecting the scholarly and popular literature of the mulatto, depicts Lydia Brown and Silas Lynch as having all of the traits associated with mixed-race persons of African descent. According to the prevailing thought of the time, mulattos were considered more intelligent than blacks with darker skin tones because of their white ancestry, but not as intelligent as whites. See Tanya Katerí Hernández, “Multiracial” Discourse: Racial Classifications in an Era of Color-Blind Jurisprudence, 57 MD. L. REV. 97, 128 n.160 (1998) (citing, as an example, E.B. Reuter, *The Superiority of the Mulatto*, 23 AM. J. SOC. 83, 87 (1917)). As a result of their mixed ancestry, whites believed that mulattos “were ‘stirrers-up of strife,’ constantly demanding greater rights and privileges for themselves and awakening false aspirations among the black masses.” WILLARD B. GATEWOOD, ARISTOCRATS OF COLOR: THE BLACK ELITE, 1880–1920, at 150 (1990). Mulattos also were depicted as “morally weak[] and physically degenerate.” *Id.* In addition, Griffith seems to lay the blame for the “mulatto problem” (miscegenation) on Northern abolitionists. THE BIRTH OF A NATION, *supra* note 103. Playing on popular beliefs about mulattos, Griffith distorts history by attributing miscegenation to Northern abolitionists rather than Southern plantation owners and overseers. *Id.* Griffith fuses the forthcoming Civil War with Stoneman’s “dual corruption” – his ambition for power coupled with his “apparently intimate relationship with his mulatto [housekeeper].” Robinson, *supra* note 98, at 168.

117. Robinson, *supra* note 98, at 168. This includes the re-creation of paintings or photographs of historic events such as Lincoln calling up volunteers and General Lee’s surrender at the Appomattox Courthouse on April 9, 1865. JAMES SNEED, WHITE SCREENS, BLACK IMAGES: HOLLYWOOD FROM THE DARK SIDE 44 (1994). Sneed writes that Griffith’s “convention of claiming that his ‘facsimiles’ were take from actual eyewitness photographs . . . seems on retrospect Griffith’s poignant attempt to pass off a false representation as a true ‘reconstruction,’ and to make us somehow forget the cinema’s falsifying potential.” *Id.*

and is not meant to reflect on any race or people of today.”¹¹⁸ In other words, the film’s disparaging portrayal of black Americans merely reflects the historical truth. The second title card, an excerpt attributed to Woodrow Wilson’s *A History of the American People*, is a direct attack on the competence of black office-holders.¹¹⁹ Similarly, the third title card is a direct attack on the federal government, suggesting the abrogation of state sovereignty on behalf of black beneficiaries. It reads: “The policy of the congressional leaders wrought . . . a veritable overthrow of civilization in the South . . . in their determination to ‘*put the white South under the heel of the black South.*’”¹²⁰ The final title card, signaling the birth of the Ku Klux Klan, and quoting Woodrow Wilson again, reads: “The white men were roused by a mere instinct of self-preservation . . . until at last there had sprung into existence a great Ku Klux Klan, a veritable empire of the South, to protect the Southern country.”¹²¹

One of the infamous scenes often shown whenever the film is invoked, and also portrayed as a “historical facsimile,” follows a title card that reads: “The riot in the Master’s Hall. The Negro party in control in the State House of Representatives, 101 blacks and 23 whites, session of 1871.” Black legislators are presented as “historical incidents” and, during the first legislative session, are shown sitting in the legislative chamber drinking alcohol and eating fried chicken with their shoeless feet perched on their desks.¹²² Griffith portrays white legislators as a “helpless . . . minority,” who sit passively watching their black colleagues misbehave.¹²³ Following this scene is a title card that reads: “Passage of a bill, providing for the

118. Robinson, *supra* note 98, at 168.

119. The excerpt reads: “Adventurers swarmed out of the North, as much the enemies of the one race as of the other, to cozen, beguile, and use the negroes. . . . In the villages the negroes were the office holders, men who knew none of the uses of authority, except its insolences.” THE BIRTH OF A NATION, *supra* note 103 (citing WOODROW WILSON, A HISTORY OF THE AMERICAN PEOPLE (1902)).

120. THE BIRTH OF A NATION, *supra* note 103

121. *Id.* The film is based on Thomas Dixon, Jr.’s virulently racist and popular 1905 novel, *The Clansman*. Griffith, however, as some of the previously mentioned captions suggest, also was influenced greatly by Woodrow Wilson’s 1902 five-volume tome, *A History of the American People*. There is, however, disagreement over whether Wilson’s historical treatment of the Civil War, Reconstruction, and the Ku Klux Klan was, in actuality, “profoundly negative towards blacks and extremely solicitous of ‘white civilisation.’” Robinson, *supra* note 98, at 165 (citing Michael Rogin, “*The Sword Became a Flashing Vision*”: D.W. Griffith’s *The Birth of a Nation*, 9 REPRESENTATIONS 150 (1985)). Robinson argues that the quotations attributed to Wilson accurately reflect his sentiments. Robinson, *supra* note 98, at 164. Chadwick, however, asserts that Griffith distorts Wilson’s ideas and often misquotes him or quotes him out of context. CHADWICK, *supra* note 71, at 122-23.

122. THE BIRTH OF A NATION, *supra* note 103.

123. *Id.*

intermarriage of blacks and whites.”¹²⁴ In the scene that follows, black members of the legislature are shown leering at white women in the gallery.

In truth, South Carolina, where the fictional Piedmont is located, was the only former Confederate state where black legislators outnumbered whites during the Reconstruction era, but only in one chamber.¹²⁵ Chadwick adds:

[T]he South Carolina convention was one of the fairest and most visionary. It called for integrated schools; restored political power to interior regions that had long suffered at the hands of legislators from big cities; enlarged women’s rights; voted for manhood suffrage for all men, black and white; abolished property qualifications for officeholders, black and white; called for the direct election of the governor; adopted the state’s first divorce law; strengthened the state’s fiscal power; reformed county governments; and revised the tax system.¹²⁶

In the ten other southern states, “blacks usually represented no more than 25 percent of any legislative house.”¹²⁷ Further, none “of [the Reconstruction legislatures] ever passed or debated” an intermarriage bill.¹²⁸ The anti-black historically distorted propaganda in *The Birth of a Nation* was so devastating because of the documentary quality of the film.¹²⁹ Thus, it is unsurprising that “[m]any critics and ministers who . . . believed [the film] was a true story argued that it should be mandatory viewing in churches and schools.”¹³⁰

According to Griffith’s film, during the Reconstruction era, whites, especially white women, needed *saving* from ignorant and licentious free blacks.¹³¹ To reinforce this point, Griffith consciously

124. *Id.*

125. CHADWICK, *supra* note 71, at 114. According to Chadwick, there were eighty-seven blacks and sixty-nine whites in the South Carolina state legislature, but blacks “had a slender majority only in the lower house, though, not the upper.” *Id.*

126. *Id.* at 114-15.

127. *Id.* at 114.

128. *Id.* at 115.

129. Dirks, *supra* note 104. “The film looks remarkably genuine and authentic, almost of documentary quality (like Brady’s Civil War photographs).” *Id.*; MAYNARD, *supra* note 104, at 25.

130. CHADWICK, *supra* note 71, at 134. “A critic for a Hearst paper wrote: ‘Children must be sent to see this masterpiece. Any parent who neglects this advice is committing an educational offense, for no film has ever produced more educational points than Griffith’s latest achievement.’” *Id.* (citations omitted).

131. In another infamous scene, Griffith introduces Gus, a black renegade Union soldier who is seen following Elsie Stoneman and the Camerons’ young daughter, Lil’ Sister. Subsequently, Gus, finding Lil’ Sister alone, pursues her. She jumps off a cliff rather than be molested by a black man. This scene, and another between Silas and Elsie, set up the accompanying caption introducing the Ku Klux Klan as “the

constructed his black characters as either bad—evil, licentious, cunning or stupid, and corrupt—or as faithful servants to white masters. To assure complete control over the major black characters, Griffith only used white actors.¹³² Thus, as political scientist Michael Rogin observes, although Griffin allowed blacks actors to play minor stereotypical roles,¹³³ his main black characters “were as bad as he painted them because he painted whites black . . . he did not want to let the representation of blackness go.”¹³⁴

organization that saved the South from the anarchy of black rule . . .” *THE BIRTH OF A NATION*, *supra* note 103 (quoting a title card from the film). This narrative ignores the sexual vulnerability of black women, during and after slavery. Black women in the South, unlike white women, were more likely to be raped by white men, but were considered unrapeable under the law. Elizabeth M. Iglesias, *Rape, Race, and Representation: The Power of Discourse, Discourses of Power, and the Reconstruction of Heterosexuality*, 49 VAND. L. REV. 868, 902, 902 n.78, 903 (1996); Dorothy Roberts, *Rape, Violence and Women's Autonomy*, 69 CHI.-KENT. L. REV. 359, 367 n.44, 368 (1993); Jennifer Wriggins, *Rape, Racism, and the Law*, 6 HARV. WOMEN'S L.J. 103, 118-21 (1983).

Griffith's treatment of Gus' subsequent lynching in *The Birth of a Nation* did more than simply redeem southern whites, the scene advanced a vision of national unity—the United States reborn as an Anglo-Saxon nation. The film ends with the marriage of the Stonemans' son and daughter to the Camerons' daughter and son. GRACE ELIZABETH HALE, *MAKING WHITENESS: THE CULTURE OF SEGREGATION IN THE SOUTH, 1890-1940* 79, 216 (1998).

132. Robinson, *supra* note 98, at 180.

133. Rogin, *supra* note 121, at 181-82. Rogin writes that “Griffith allowed a few blacks to act the nigger.” *Id.*

134. Robinson, *supra* note 98, at 180 (citing Rogin, *supra* note 121, at 181-82). At least one scholar speculates that “racial impersonation serves a unique function for white people, not so much mimetic as punitive or purgative: a way of replaying the subordination of black people as well as exonerating it.” SUSAN GUBAR, *RACECHANGES: WHITE SKIN, BLACK FACE IN AMERICAN CULTURE* 55 (1997). Gubar also relies on comments of writer/anthropologist Zora Neale Hurston who once commented: “Everyone seems to think that the Negro is easily imitated when nothing is further from the truth. . . . I wonder why the black-face comedians are black-face; it is a puzzle—good comedians, but darn poor niggers.” *Id.* at 54. The use of black-face actors for major parts in *Birth of a Nation* is especially eerie since Griffith used “real” black actors as extras, “cavorting slaves on the antebellum plantation, carousing Northern soldiers disrespectfully bullying whites off the streets.” *Id.* at 61. Ironically, black-faced white actors usually play black clown or ministry figures, not evil blacks. For a discussion of this history, see *id.* at 53-55, 75.

Nevertheless, arguably Griffith's use of white actors in black-face still conveys the same message, the justification of black subordination by whites. Another scholar argues that depiction of blacks as vicious criminals and rapists in *The Birth of a Nation*, other media and popular culture was driven by the need for Americans in both the South and North “to suppress the expansion of black civil rights and political power developed during the progressive interval of Reconstruction (1867-1877) and the determination to reestablish white supremacist social and political domination over the South.” ED GUERRERO, *FRAMING BLACKNESS: THE AFRICAN AMERICAN IMAGE IN FILM* 12 (1993). The author refers to literary critic Addison Gayle's discussion of this point in ADDISON GAYLE, JR., *THE WAY OF THE NEW WORLD: THE BLACK NOVEL IN*

On one hand, *The Birth of a Nation* simply reflected the highly inflammatory representations of blacks in nineteenth-century theater, humor magazines, postcards, children's books, the social sciences, and historical works, as well as twentieth-century popular culture and scholarship.¹³⁵ By the early twentieth century, whites in both the North and South thought that Reconstruction was a greater tragedy than the Civil War because of black (mis)rule.¹³⁶ Yet, the film is racially significant because it marks a new and potent visual mechanism by which to perpetuate "an established racist iconography of blacks."¹³⁷

The image of blacks as vicious criminals/rapists, an image graphically perpetuated by films like *The Birth of a Nation*, remains widespread in contemporary American society. Perhaps the most notorious contemporary invocation of this image occurred during the 1988 presidential campaign between George Bush and then Massachusetts Governor Michael Dukakis. The Republican Party, aided by the American press, magnified and distorted Dukakis' record on crime using Willie Horton, a black man. Horton, a convicted murderer, was released under Massachusetts' Prison Furlough Program and subsequently committed rape and murder in another state.¹³⁸ Thus, Horton, as used by the Republicans and the news media, embodied the black criminality portrayed in *The Birth of a Nation*. According to Kathleen Hall Jamieson, Dean of the

AMERICA (1976); HALE, *supra* note 131, at 232-36. In addition, there was a psychological aspect to the phenomena; white southern males' role as family provider was undermined by the war and resulting economic turmoil in the region. GUERRERO, *supra*, at 12. As a result, white southern males "sought to inflate [their] depreciated sense of manhood by taking up the honorific task of protecting White Womanhood against the newly constructed specter of the 'brute Negro.' . . . Thus a combination of political, psychic, and material motives shaped the new stereotype." *Id.* The author cites historian Joel Williamson's discussion of Thomas Dixon's novels and lecturers. *Id.*

135. Robinson, *supra* note 98, at 163; see also ETHNIC NOTIONS (Marlon Riggs 1986) (documenting the origins and consequences of 150 years of anti-black stereotypes and prejudices embodied in songs, films, children's toys, advertisements and household items).

136. HALE, *supra* note 131, at 73. "The 'history' of the plantation pastorate, the 'civilization of the war, and the blackening of Reconstruction narrated away both southern and national moral obligations to African Americans, providing a cultural foundation for the expansion of both segregation at home and the American empire abroad." *Id.* at 83-84.

137. "[A]n established racist iconography of blacks merely acquired new visual techniques in early American film." *Id.*

138. Kathleen Hall Jamieson, *The Subversive Effects of a Focus on Strategy in News Coverage of Presidential Campaigns*, in 1-800 PRESIDENT: THE REPORT OF THE TWENTIETH CENTURY FUND TASK FORCE ON TELEVISION AND THE CAMPAIGN OF 1992 (1993), reprinted as *Insinuation and Other Pit Falls In Political Ads and News available at* <http://www.pressroom.com/~afriamale/jamieson.htm> (last visited Oct. 24, 2003).

Annenberg School of Communications at the University of Pennsylvania, the

use of Horton shaped the visual portrayal of crime in network news in ways that reinforced the mistaken assumption that violent crime is disproportionately committed by blacks, disproportionately committed by black perpetrators against white victims, and disproportionately the activity of black males against white females. In other words, the Republicans' use of Horton shaped the visuals in 1988 network crime coverage in a way that underscored the Bush message. Once the Horton narrative was embedded in public consciousness, mention of his name should have been sufficient to evoke the entire story.¹³⁹

The Birth of a Nation also reshaped the national memory about slavery, the Civil War and Reconstruction. It "was uniquely responsible for encoding the white South's version of Reconstruction on the DNA of several generations of Americans."¹⁴⁰ Again, this raises a generational issue. The impact of these images would be stronger on the people who actually saw the film. For example, between 1920 and 1925, the Klan, greatly revitalized, enrolled millions, frequently

139. Jamieson continues:

Although his given name is William, he calls himself William, court records cite him as William, a July 1988 *Reader's Digest* article identifies him as William J. Horton, Jr., and press reports prior to the Republican ad and speech blitz name him "William," the Bush campaign and its supporting PACs identified the furloughed convict as "Willie" Horton

One might trace the familiar "Willie" to the naming practices of slave masters, to our patterns of talk about gangsters, or to the sort of benign paternalism that afflicts adults around small children. Whatever its origin, in discussions of murder, kidnapping, and rape, "Willie" summons more sinister images of criminality than does "William."

Reporters reduced Dukakis on crime to the Republican sculpted image of "Willie Horton." In news reports, "Willie" Horton's name was mentioned more often by reporters than by George Bush or any of his representatives. Use of dramatic, coherent narrative increases the likelihood of recall By the campaign's end, even the Democratic candidates had accepted the Republican identification of Horton. . . .

To portray as a typical criminal a black male who was an accessory to a felony murder, assaulted a white male, and raped a white female is inaccurate. Blacks run a greater risk of forcible rape, robbery, and aggravated assault than whites. Low-income individuals are the most likely victims of violent crime. Men are more likely than women to be the victims of violence. FBI statistics confirm that, unlike robbery, rape and murder in the United States are primarily intraracial, not interracial, phenomena. In 1988, for example, only 11.3 percent of the reported rapes involved a black rapist and a white victim.

Id.

140. DAVID LEVERING LEWIS, W.E.B. DUBOIS: THE FIGHT FOR EQUALITY AND THE AMERICAN CENTURY, 1919-1963 86-87 (2000).

using *The Birth of A Nation* to draw recruits.¹⁴¹ Even later, the film continued to be invoked to raise the specter of black rule, black incompetence, and the dangers of miscegenation.

In 1944, following the Supreme Court's ruling in *Smith v. Allwright*¹⁴² that outlawed the white primary, South Carolina Governor Olin Johnston, upset with the implications of the ruling that provided for the re-enfranchisement of black voters in the state, invoked the text from *The Birth of a Nation*, telling members of the state General Assembly: "Where you now sit, . . . there sat a majority of negroes. . . . The records will bear me out that fraud, corruption, immorality, and graft existed during that regime that has never been paralleled in the history of our State."¹⁴³ Yet, the historical evidence indicates just the opposite. In 1957 following the bombing of a civil rights activist's home, supporters of the Klan-linked bombers used the film to raise money for the bombers' defense fund. Approximately three hundred spectators in South Carolina, two dozen dressed in Klan regalia, cheered the showing of *The Birth of a Nation*.¹⁴⁴

Over the years the film has had its defenders. A 1948 article in *The Nation* said that *The Birth of a Nation* was not a anti-black film because it is "obvious" that Griffith tried to be fair in his depiction of blacks.¹⁴⁵ Thus, the writer implies that the bulk of the film is in keeping with the standard interpretation on the Reconstruction Period. To some extent, the writer is correct. With the exception of W.E.B. DuBois's *Black Reconstruction* in 1935, which was generally disregarded by mainstream historians for many years, most historians accepted the historical interpretation presented in the film, that of the "Evil' Northern Carpetbaggers; Negro 'dupes'; and poor, defenseless White Southerners" as fact.¹⁴⁶ Only in the past forty years has the Reconstruction period been reconsidered by historians,¹⁴⁷ and only in the past decade has the old vision of slavery

141. Robinson, *supra* note 98, at 180.

142. 321 U.S. 649 (1944).

143. Bryant Simon, *Race Reaction in South Carolina*, in JUMPIN' JIM CROW: SOUTHERN POLITICS FROM CIVIL WAR TO CIVIL RIGHTS 250-51 (Jane Dailey et. al. eds., 2000) [hereinafter JUMPIN' JIM CROW].

144. Timothy B. Tyson, *Dynamite and "The Silent South,"* in JUMPIN' JIM CROW, *supra* note 143, at 290.

145. MAYNARD, *supra* note 104, at 39. "Griffith's absolute desire to be fair, and understandable, is written all over the picture; so are degrees of understanding, honesty, and compassion far beyond the capacity of his accusers." *Id.* Further, he continues, even if the film was anti-black "a work of such quality should be shown, and shown whole." *Id.*

146. HALE, *supra* note 131, at 80-82.

147. Only in the late 1960s and early 1970s did American historians reexamine slavery and reconstruction. See, e.g., JOHN W. BLASSINGAME, *THE SLAVE COMMUNITY: PLANTATION LIFE IN THE ANTEBELLUM SOUTH* (1972); EUGENE D. GENOVESE, *ROLL,*

and Reconstruction been rejected by historians.¹⁴⁸ Most Americans, however, remain woefully ignorant about the true facts of the slavery and Reconstruction eras.¹⁴⁹

For example, a recent report by the American Council of Trustees and Alumni found that 81% of college seniors from the top fifty-five American Colleges and Universities *failed* a test of basic American history.¹⁵⁰ The test questions were drawn from the basic *high school* curriculum.¹⁵¹ The average score was 53 percent.¹⁵² More specifically, only 29% of the students knew the meaning of the term “Reconstruction,” and only 26% knew the significance of the Emancipation Proclamation issued by President Lincoln.¹⁵³ In contrast, the study found that the students surveyed had an outstanding knowledge of contemporary popular culture.¹⁵⁴ Younger students fare no better. Secretary of Education Rod Paige, remarking on the release of the NAEP’s 2001 history scores, said that “what this report card is telling us is that too many of our public school children are still struggling in this critical core subject area—history. And the higher the grade in school, the lower their understanding in history.”¹⁵⁵

JORDAN, ROLL: *THE WORLD THE SLAVES MADE* (1972); HERBERT G. GUTMAN, *THE BLACK FAMILY IN SLAVERY AND FREEDOM, 1750-1925* (1976); George Rawick, *From Sundown to Sunup: The Making of the Black Community*, in *THE AMERICAN SLAVE: A COMPOSITE BIOGRAPHY* (1972). For similar works on reconstruction and the aftermath of slavery, see JOHN W. BLASSINGAME, *BLACK NEW ORLEANS, 1860-1880* (1973); ENGS, *supra* note 94; WILLIE LEE ROSE, *REHEARSAL FOR RECONSTRUCTION: THE PORT ROYAL EXPERIMENT* (1964); JOEL WILLIAMSON, *AFTER SLAVERY: THE NEGRO IN SOUTH CAROLINA DURING RECONSTRUCTION, 1861-1877* (1965).

148. See, e.g., IRA BERLIN, *MANY THOUSANDS GONE: THE FIRST TWO CENTURIES OF SLAVERY IN NORTH AMERICA* (1998); BLIGHT, *supra* note 71; JOHN HOPE FRANKLIN & LOREN SCHWENINGER, *RUNAWAY SLAVES: REBELS ON THE PLANTATION* (1999); LEON F. LITWACK, *TROUBLE IN MIND: BLACK SOUTHERNERS IN THE AGE OF JIM CROW* (1998).

149. See *infra* notes 150-55.

150. See AMERICAN COUNCIL OF TRUSTEES AND ALUMNI, *LOSING AMERICA’S MEMORY: HISTORICAL ILLITERACY IN THE 21ST CENTURY* (Feb. 21, 2000), available at http://www.goacta.org/Reports/acta_american_memory.pdf (illustrating that a large percentage of a sample of college seniors failed a basic history test).

151. *Id.* Many of the questions came directly from the National Assessment of Educational Progress (NAEP), a test routinely given to many high school students. *Id.*

152. *Id.* App. A at 1.

153. *Elite College History Survey*, in American Council of Trustees and Alumni, *supra* note 143 (citing questions 4 and 7).

154. *Id.* For example, ninety-nine percent of the students surveyed could identify the cartoon characters Beavis and Butthead and ninety-eight percent recognized rapper Snoop Doggy Dog. *Id.* (citing questions 5 and 17).

155. Secretary of Education Rod Paige, NAEP History Scores Announcement (May 9, 2002) at <http://www.ed.gov/Speeches/05-2002/05092002.html>; see also WE THE PEOPLE, NATIONAL ENDOWMENT FOR THE HUMANITIES, EVIDENCE OF AMERICAN AMNESIA, at <http://www.wethepeople.gov/news/amnesia.html> (last visited Aug. 17,

Still, even some informed Americans continue to defend the film. For example, in 1974, film scholar Richard Maynard argued that *The Birth of a Nation* is a cinematically “unprecedented masterpiece—a pioneer in film style and technique.”¹⁵⁶ He concedes, however, that the film “present[s] a narrow, essentially anti-Black interpretation of pre- and post-Civil War American history.”¹⁵⁷ His statement reflects the ambivalence of film scholars about the film’s present value.¹⁵⁸ As a result, there have been periodic revivals of the film, and the uncensored film often is shown to film students because of Griffith’s pioneering film techniques. More significantly, almost ninety years later, *The Birth of a Nation* is widely available on video or DVD for a modest price.¹⁵⁹ Thus, the continuing endurance of *The Birth of the Nation*, uncensored, perpetuates and compounds the disinformation about slavery and Reconstruction.

After *The Birth of A Nation* became something of an

2003) (discussing recent polls and surveys showing a lack of basic knowledge in American history.)

156. MAYNARD, *supra* note 104, at 25. Film critic Tim Dirks writes:

Its pioneering technical work, often the work of Griffith’s under-rated cameraman Billy Bitzer, includes many techniques that are now standard features of films, but first used in this film, . . . including the following: special use of subtitles graphically verbalizing imagery, its own musical score written for an orchestra, the introduction of night photography (using magnesium flares), the use of outdoor natural landscapes as backgrounds, the definitive usage of the still-shot, the technique of the camera “iris” effect (expanding or contracting circular masks to either reveal and open up a scene, or close down and conceal a part of an image), the use of parallel action . . . in a sequence, extensive use of tinting for dramatic or psychological effect in sequences, moving, traveling or “panning” camera tracking shots, the use of total-screen close-ups to reveal intimate expressions, beautifully crafted, intimate family exchanges, the use of vignettes seen in “balloons” or iris-shots in one portion of a darkened screen, the use of fade-outs and cameo-profiles, high-angle shots and the abundant use of panoramic long shots, the dramatization of history in a moving story—an example of an early spectacle or epic film with historical costuming, impressive, splendidly-staged battle scenes with hundreds of extras, extensive cross-cutting between two scenes to create excitement and suspense (especially the scene of the gathering of the Klan), expert story-telling, with the cumulative building of the film to a dramatic climax.

Dirks, *supra* note 104.

157. MAYNARD, *supra* note 104, at 25.

158. Clyde Taylor writes: “The passive racism of film studies has led it to neglect the meaning of Griffith’s national allegory and the role of racism in it, in striking contrast to the subtle social analysis given other national allegories like the Western or the gangster movie.” Taylor, *supra* note 73, at 17.

159. For example, in 1986 the author purchased a videotape of the film in a Target store in Tulsa, Oklahoma for less than twenty dollars. A colleague recently gave me a DVD of the film he found for less than ten dollars.

embarrassment, another film classic, *Gone With The Wind* (1939),¹⁶⁰ recently ranked by the AFI as fourth on its top 100 American films of "all time,"¹⁶¹ continued the sympathetic portrayals of an antebellum South as one with a benign slave system.¹⁶² *Gone With the Wind* seems to repeat and reinforce earlier myths about the antebellum period in the South, the Civil War and Reconstruction. White Southerners were rich, well-educated, genteel plantation owners who loved their slaves and were loved in return. Southerners were forced by the North to fight a losing cause; Reconstruction forever devastated the South.¹⁶³

The film's prologue continues the romanticization of the antebellum South. It reads that "[t]here was a land of Cavaliers and

160. *GONE WITH THE WIND*, *supra* note 73. With the Civil War as a background, the story line centers around the romance between Scarlett O'Hara, a spoiled, strong-willed and independent Southern belle who loves, but loses, Ashley Wilkes. Subsequently, she falls for Rhett Butler, a self made wealthy rogue. As a result of the war, O'Hara falls from the utmost luxury to absolute starvation and poverty when the Union Army carries off everything from her beloved plantation, Tara. *Id.* Then the carpetbaggers arrive after the war, further thwarting her efforts to survive and prosper. *Id.* Some of her slaves, notably Mammy, stick with her despite the promise of freedom. *Id.* In the end Scarlet saves Tara, but loses Rhett and she will think about the future on another day. *Id.*

161. American Film Institute, *supra* note 105 (last visited Aug. 27, 2003).

162. CHADWICK, *supra* note 71, at 189. The twenty-five hundred tickets to the December 15, 1939 premiere in Atlanta sold for ten dollars rather than the usual fifty cents. *Id.* at 183.

If the South had won the Civil War in a replay, Atlanta could not have been in a more celebratory mood than on [December 15, 1939], the night of the premiere of *Gone With the Wind*. Over seven hundred thousand visitors had booked hotel rooms throughout the city and in small towns as far as thirty miles away. . . . Thousands of citizens rented 1860s-style hoopskirts and suits for the occasion. . . . The governors of seven states were in attendance.

Id. Chadwick continued: "In retrospect, . . . it's clear that the movie could not miss: it was based on a number one best-selling book, it had a stellar cast and it was one of the first great technicolor extravaganzas." *Id.* at 185. Some ticket scalpers got more than two hundred dollars for a single ticket. *Id.* at 184. *Gone With the Wind* was re-released several times in 1939 and 1945, during which more than 120 million Americans saw the film. *Id.* at 187. The film was very successful and earned more than \$60 million at the box office (roughly \$1 billion in today's currency). *Id.*

163. *Id.* at 189-94. Like *The Birth of a Nation*, there are two families, the O'Haras and the Wilkeses, but both are southern slave-owning families. Victor Fleming's direction makes the audience bond with these personable families who love their slaves and are loved back by them. Unlike his predecessor, D.W. Griffith, David Selznick, the film's producer, actually toned down the film. Margaret Mitchell's book was more strongly anti-North and pro-Klan. Chadwick writes that Mitchell, like many other Southerners, believed the old Klan of the 1870s and the recently emerged second Klan of the 1930s was a protector of whites, especially white women, from blacks. Selznick did not want to romanticize or encourage the Klan, which was experiencing a resurgence in membership and had, during the Spring and Summer of 1939, extended its violence to white Catholics and Jews. *Id.* at 195-96.

Cotton fields called the Old South. . . . Look for it only in the books, for it is no more than a dream remembered, a Civilization gone with the wind."¹⁶⁴ The film, however, makes slight refinements to the plantation myth.¹⁶⁵ Margaret Mitchell's novel and David Selznick's film create a South where hard work, rather than inheritance, translates into wealth, the American dream of individual upward mobility. Like Rhett Butler, working class whites could become rich plantation owners through diligence, sweat and a bit of ingenuity! Selznick, the film's producer, universalized southern history, "expanding for all white Americans [Margaret Mitchell's] modern narration of southern history as the autobiography of a middle-class and modern regional whiteness."¹⁶⁶ *Gone With the Wind* was so successful in the late 1930s and early 1940s, some scholars argue, because film audiences coming out of the depression "yearned for simpler times and a place of their own."¹⁶⁷

There also are subtle differences between *The Birth of a Nation* and *Gone with the Wind* in the film's portrayal of blacks. Although apparent in servile roles, blacks in *Gone With the Wind* are not portrayed as thugs or beasts.¹⁶⁸ Thus, the film presents only one view of black Americans, in their *proper* role as servants for white Americans, not as ongoing contributors to the development of the South and the nation.

Mammy, the consummate servant in *Gone With the Wind*, is

164. GONE WITH THE WIND, *supra* note 73.

165. Fearing that, like *The Birth of a Nation*, his film would encourage the Klan, which "was undergoing a strong resurgence," he chose not to romanticize the organization and omitted any reference to the Klan from the film. CHADWICK, *supra* note 71, at 195-96. In the novel, Ashley Wilkes and Frank Kennedy, one of Scarlett's three husbands, are Klan leaders, and Melanie Wilkes, Scarlett's saintly cousin, lies to the federal government to protect Ashley, her husband, and the other Klan leaders. According to Mitchell, the Klan's principle purpose is to protect women and children against black and white agitators. *Id.* Reflecting the sentiment of Dixon's earlier novel, Mitchell wrote to a correspondent in 1937: "Later, it was used to keep the Negroes from voting eight or ten times at every election. . . . Members of the Klan knew that if unscrupulous or ignorant people were permitted to hold office in the South the lives and property of Southerners would not be safe." Letter from Margaret Mitchell to Ruth Tallman (July 30, 1937), in MARGARET MITCHELL'S *Gone With the Wind* LETTERS, 1936-1949 162 (Richard Harwell ed., 1976). Chadwick also writes: "It also is probable that the Jewish Selznick . . . did not want to glamorize the new Klan, which harassed Jews. '[I have] no desire to produce an anti-Negro film. . . .' [The] inclusion of the KKK might make the movie 'come out as advertisements for society's intolerant groups.' [But] Selznick was careful not to talk publicly about leaving the Klan out of the film" CHADWICK, *supra* note 71, at 196-97.

166. HALE, *supra* note 131, at 282.

167. CHADWICK, *supra* note 71, at 222.

168. While Mitchell's book makes liberal use of the word "nigger," Selznick omits the word from the film. *Id.* at 191-92. In fact, Selznick omits from the film version of *Gone With the Wind* the novel's worst depictions of black Americans. *Id.* at 195.

played by a black woman, Hattie McDaniels, instead of a white man in black face, although she is physically similar to her *The Birth of a Nation* counterpart. While “many of the *loving* slaves are depicted as idiots or fools,” Mammy, although a slave, runs the plantation Tara.¹⁶⁹ Mammy’s importance in perpetuating the distorted historical memory about slavery was confirmed when Hattie McDaniels won an Oscar for Best Supporting Actress for her role in *Gone With the Wind*.¹⁷⁰ Hers was the first Oscar ever awarded to a black actor.¹⁷¹ Thus, it is unsurprising that “mammy,” the loyal and protective servant, becomes a stock black character along with similarly stereotypical black domestic servants in American films and later in

169. *Id.* at 191 (emphasis added). Most notable is the depiction of the slave Prissy, a “whining, witless character,” who is slapped by Scarlett when Prissy “lies about her ability to deliver babies.” *Id.*

170. Robinson, *supra* note 98, at 185.

171. *Id.* Other Oscars have been awarded to black actors for similarly unflattering stereotypical roles. Sidney Poitier received a Best Actor Oscar for playing Homer Smith, an unemployed construction worker in *LILIES OF THE FIELD* (United Artists 1963). Morgan Freeman won Best Supporting Actor for his role as Ellis Boyd “Red” Redding, a prison entrepreneur in *THE SHAWSHANK REDEMPTION* (Castle Rock Entertainment 1994). Two years later, Cuba Gooding, Jr. won in the same category for his role as Rod Tidwell, an egomaniacal professional football player, in *JERRY MAGUIRE* (TriStar Pictures 1996). Further, although nominated for his outstanding performances as Malcolm X, *MALCOLM X* (40 Acres & a Mule Filmworks 1992), and Rubin “Hurricane” Carter, *THE HURRICANE* (Universal Pictures 1999), Denzel Washington won two Oscars for more stereotypical roles. He won a Best Supporting Actor Oscar for his role as Private Trip, an escaped slave and rebellious Union soldier in *GLORY* (TriStar Pictures 1989), and a Best Actor Oscar for his role as Detective Alonzo Harris, a corrupt police officer in *TRAINING DAY* (Warner Bros. 2001). Similarly, Whoopi Goldberg, passed over for an Oscar in *THE COLOR PURPLE* (Warner Bros. 1985), won a Best Supporting Actress Oscar for her role as Oda Mae Brown, a Spiritualist in *GHOST* (Paramount Pictures 1990). Halle Berry won an Oscar for best actress in *MONSTER’S BALL* (Lions Gate Films, Inc. 2001), playing a poor southern woman, Leticia Musgrove, who enters into a sexual relationship with her murderer-husband’s white executioner. The racialized stereotypes in *Monster’s Ball* are subtle, and thus more troubling. First, Leticia’s seemingly easy sexual availability to a white man she does not know is reinforced by a somewhat gratuitously explicit nude love scene. *MONSTER’S BALL*, *supra*. This aspect of the film reinforces the stereotype that black women are sexually promiscuous and readily available to white men. *Id.* Second, Leticia, overwhelmed by her circumstances, comforts herself with alcohol while emotionally and physically abusing her son, perpetuating the stereotype of black women as bad mothers. *Id.*; see also Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 HARV. L. REV. 1419, 1436 (1991) (arguing that black women, because of their race and poverty, are considered unfit for parenting). Finally, despite being surrounded by other black people, there is no suggestion that Leticia gets any emotional or economic support from that community. *MONSTER’S BALL*, *supra*. She is emotionally and economically dependent solely on white largesse. *Id.* The child-like quality of her dependence is reminiscent of the child-like quality attributed to slaves.

television.¹⁷²

Other plantation genre films of the period¹⁷³ reflected many of the same myths, especially the notion that most white Southerners were wealthy landowners with happy loving slaves.¹⁷⁴ Literary works that romanticized the antebellum South and slavery also reinforced these impressions in the minds of most Americans.¹⁷⁵ As a result, today many Americans still believe that the white antebellum South symbolizes a lost golden age. As film historian Bruce Chadwick writes:

Until the 1970s, Americans who sat in movie theaters saw an endless string of Civil War films in which African Americans were mostly depicted as groveling simpletons or, as in *The Birth of a Nation*, murderers and rapists. *Movies, with their overpowering ability to shape opinion, convinced many whites that the disgraceful way in which blacks had been treated in and out of slavery over the decades was perfectly justified.*¹⁷⁶

172. See, e.g., DONALD BOGLE, *PRIME TIME BLUES: AFRICAN AMERICANS ON NETWORK TELEVISION* (2001); DONALD BOGLE, *TOMS, COONS, MULATTOES, MAMMIES, AND BUCKS: AN INTERPRETIVE HISTORY OF BLACKS IN AMERICAN FILMS* (4th ed. 2001); *ETHNIC NOTIONS* (Marlon Riggs 1986).

173. See, e.g., *JEZEBEL* (Warner Bros. 1938); *THE LITTLEST REBEL* (20th Century Fox 1935) (depicting Shirley Temple, accompanied by her faithful black servant, Uncle Billy, going to President Lincoln to save Temple's rebel father); *THE SANTA FE TRAIL* (Warner Bros. 1940); *SO RED THE ROSE* (Paramount Pictures 1935).

174. Robinson, *supra* note 98, at 185. Chadwick notes that during the 1930s producers believed that Civil War films would attract an audience. CHADWICK, *supra* note 71, at 199.

Thus, *Gone With the Wind* was preceded by films like *Steamboat Round the Bend*, *Dixiana*, *Jezebel*, *So Red the Rose*, *Mississippi*, *The Texan*, *The Vanishing Virginian*, *The Little Colonel*, *The Littlest Rebel*, *Cotton Pickin' Days*, *My Old Kentucky Home*, *Dixie Days*, *Hearts in Dixie*, *Mississippi Gambler*, and *Showboat*. . . . Except for the highly successful Shirley Temple films *The Littlest Rebel* and *The Little Colonel*, however, most of these did only marginal business at the box office.

Id.

A contemporary film, *Gettysburg*, differs slightly from earlier films about the Civil War because it focuses entirely on the battle and the military strategy, not on the politics before and during the war. *GETTYSBURG* (Turner Pictures 1993). Nevertheless, at least one reviewer could not resist comparisons with *The Birth of a Nation*. Ken Ringle of the *Washington Post* said: "If '*Gettysburg*' is not exactly '*Birth of a Nation*,' it attempts—like D.W. Griffith's landmark epic—to explore with similar spectacle such weighty abstractions as duty, brotherhood, justice and liberty." Ken Ringle, *Turners's 'Gettysburg': A Losing Effort, a Noble Cause*, WASH. POST, Oct. 10, 1993, at G3.

175. CHADWICK, *supra* note 71, at 23-29. Chadwick notes that theater productions also romanticized the antebellum period. *Id.* at 33-35.

176. CHADWICK, *supra* note 71, at 14-15 (emphasis added). Film scholar Ed Guerrero writes that the Hollywood Plantation genre of film spanned almost sixty years starting with *The Birth of a Nation*, and including such "classic cinema" as *Jezebel* and *Gone With the Wind*, then

Given this massive and consistent visual picture of a mythical southern past, white resistance to black reparation discussions is understandable. Granted, Americans no longer sit through an endless string of flagrantly anti-black movies, and those older white Americans who did absorb those images and were raised in a racially segregated society are starting to die off. Yet it is unfortunate, as mentioned previously, that older white Americans still exert a disproportionate amount of political influence because of their voting consistency and their accumulated wealth. Further, although the younger generation infrequently views anti-black Civil War films, they are subject to other media sources that perpetuate and reinforce negative images of black Americans.¹⁷⁷

One of the most recent Civil War genre films, *Gods and Generals*,¹⁷⁸ demonstrates "how little Hollywood's conception of that war has progressed since Griffith's 1915 epic."¹⁷⁹ The film focuses on the rise of confederate General Thomas "Stonewall" Jackson in the three years of battles that preceded Gettysburg.¹⁸⁰ From the confederate's and filmmaker's perspective, this is a holy war, a lost cause. Following "the example of '*Gone With the Wind*' . . . [*Gods and Generals*] sanitize[s] the South's treatment of African-Americans. Its one-sided vision shows freed and about-to-be-freed slaves cleaving to their benign white masters and loyally serving the Confederate

during and after World War II, Hollywood's plantation mythology underwent a period of significant revision that softened some of the genre's supremacist assumptions about slavery, as exemplified by such films as *Band of Angels* [Warner Bros.] (1957). Finally, recognizing the postwar pressures of an intensifying black political struggle for human rights, by the late 1960s a sharp reversal of perspective in the plantation genre was expressed in such films as *Mandingo* [Paramount Pictures] (1975) and *Drum* [Dino De Laurentiis Productions] (1976).

GUERRERO, *supra* note 134, at 10.

177. Robert M. Entman, *Blacks in the News: Television, Modern Racism and Cultural Change*, 69 JOURNALISM Q. 341, 349-55 (1992) (disproportionate amount of local news broadcasts focus on violent crimes, especially crimes committed by blacks); Jon Hurwitz & Mark Peffley, *Public Perceptions of Race and Crime: The Role of Racial Stereotypes*, 41 AM. J. POL. SCI. 375, 379-80 (1997). Hurwitz and Peffley write: "A large and eclectic literature has shown convincingly that whites respond more punitively to blacks than to those of their own race. . . . The tendency to judge and punish blacks more harshly is particularly prominent among whites who perceive African-Americans most pejoratively . . ." *Id.* at 378-79; see generally KATHLEEN H. JAMIESON, *DIRTY POLITICS: DECEPTION, DISTRACTION, AND DEMOCRACY* (1992) (blacks in national news).

178. GODS & GENERALS (Ted Turner Pictures & Warner Brother Pictures 2002).

179. See Christopher Sharrett, *Gods and Generals*, CINEASTE 36, 36 (Summer 2003) (film review) (writing that "*Gods and Generals* says much about the reactionary, racist slant on the American past that saturates large sectors of 'liberal' mass media, in an era of neoconservative retrenchment").

180. See GODS & GENERALS, *supra* note 176.

army.”¹⁸¹

In the battle scenes, Ronald Maxwell, the director, used thousands of Civil War “reenactors.”¹⁸² These weekend warriors routinely dress up and relive Civil War battles in national parks.¹⁸³ Joining these average American pseudo citizens-soldiers in cameo roles were real life Southern politicians, Senator Phil Gramm of Texas and Senator Robert Byrd of West Virginia, decked out “as bewigged members of the secessionist Virginia legislature.”¹⁸⁴ One reviewer for *Cineaste*, a film journal, complained about the pervasiveness of Griffith’s conception of the Civil War in contemporary American society and “the complacent acceptance of racist representation in the current moment.”¹⁸⁵

As mentioned previously, myths about slavery and Reconstruction are perpetuated by ignorance or indifference about the impact and consequences of slavery. What else explains the shock the nation experienced with the 1977 premier on commercial television of the mini-series *Roots*,¹⁸⁶ a program that tells the slave story from a black perspective?¹⁸⁷ *Roots* marks an important shift in the depiction of the Civil War. Based on Alex Haley’s best selling book by the same name, *Roots* tells the story of Kunta Kinte, an African kidnapped and brought to South Carolina as a slave, and follows his descendants for more than one hundred years.¹⁸⁸ Looking at slavery from a black perspective, the series depicted the violence and brutality of slavery and the dignity and humanity of black slaves.¹⁸⁹ “*Roots* represented a successful counterattack on the . . . Plantation Myth. The white owners in *Roots* were not all good to their slaves, the slaves were not all joyful cotton pickers, and there

181. Stephen Holden, *Gory, Glory Hallelujah: Not Just Whistlin’ ‘Dixie’*, N.Y. TIMES, Feb. 21, 2003, at E13 (film review).

182. Sharrett, *supra* note 179, at 37.

183. *Id.*

184. *Id.* at 38.

185. *Id.* at 36. According to Sharrett

With few variations (Edward Zwick’s *Glory* might be one exception, with numerous qualifications), the American cinema has told stories about the Civil War that look back on the period as a time of absolute conformism and an unquestioned social order, when women and minorities were in their proper place Above all, the Civil War cinema almost invariably lauds the Confederate Lost Cause

Id. at 36-37.

186. *Roots* (ABC Television Broadcast, Jan. 23, 1977 – Jan. 30, 1977).

187. Bruce Chadwick also argues that the television series *Roots* helped overturn the victimized South myth – followed by the film *Glory*. CHADWICK, *supra* note 71, at 6-7.

188. See *Roots*, *supra* note 186.

189. See *id.*

was not a cavalier to be seen.”¹⁹⁰

Some academics hoped that *Roots* “would do for race relations and black self-esteem what hundred of textbooks never had.”¹⁹¹ The series, however, did not trigger the expected discussions about slavery, Reconstruction and *de jure* segregation. There was no acceptance by white Americans of moral responsibility for healing the racial divide. Ironically, rather than trigger any sense of moral guilt or responsibility, “many whites seem to feel . . . an unexpected shock of identification with blacks.”¹⁹² Most subsequent depictions of slavery and the Civil War, like Ken Burns’ critically acclaimed PBS 1990 series, continued to tear down the myths about the Civil War and slavery, but triggered no public discussions about slavery and its legacy.¹⁹³

Despite contemporary examples that more accurately depict slavery and the Civil War, images from the nineteenth and early twentieth century remain powerful influences on public attitudes toward black Americans.¹⁹⁴ Consider, for example, the reaction of many whites to the acquittal of former football star O.J. Simpson for

190. CHADWICK, *supra* note 71, at 269. Chadwick argues that the series positively affected the racial views of white viewers by shattering the myths about slavery perpetuated by films like *The Birth of a Nation* and *Gone With the Wind*. The first night of *Roots* reached a viewing audience of 36.3 million homes, more than the viewing record of 33.9 million homes held by the television premier of *Gone With the Wind* in 1976. The eight night series was seen by 85 percent of all Americans. *Id.* at 270-71.

191. *Id.* at 273.

192. *Id.* at 272-73 (quoting Lance Morrow).

193. *See id.* at 291-92.

194. *See* ELLIS COSE, *RAGE OF A PRIVILEGE CLASS* (1995) (describing examples of highly educated and well-placed black individuals being routinely mistaken for servants or questioned about their presence in places where blacks were seldom seen). Consider the 1993 incident where Newark Municipal Judge Claude Coleman, a black man, was falsely accused of using a stolen credit card; he was handcuffed and dragged through a crowd of holiday mall shoppers, chained to the wall at the police station and prevented from obtaining counsel and “even from urinating.” David Margolick, *At the Bar*, N.Y. TIMES, Jan. 7, 1994, at A23. Despite his protests and display of identification, Judge Coleman was seen by mall security personnel and police as a black man and thus presumptively criminal. *Id.* Consider also the following example of the persistence of segregation in public accommodations. For thirty years, a liquor store and bar in Perry, Florida had racially segregated rooms for white and black patrons. The bar owner claims that the segregated seating was “the customers’ choice.” Sue Anne Pressley, *Fla. Bar a Throwback To a Segregated Era: Persisting Discrimination Was Quietly Accepted*, WASH. POST, Mar. 19, 2001, at A3. State officials and others rejected this reason and concluded that the practice represents “a brand of racism so deeply entrenched, so much a part of the fabric of life here, that it remained unchallenged.” *Id.* Perhaps the tacit acceptance by blacks and whites in this small town of racially segregated public spaces reflects how little racial attitudes have changed thirty-five years after passage of federal legislation outlawing these practices. *Id.*

the murder of his wife. Simpson, a black American, whose popularity among whites remained high long after his professional football career ended, studiously avoided any link with the black community.¹⁹⁵ Despite his skin tone and phenotypical characteristics, O.J. had become “raceless” in the minds of many whites until linked to the murder of his former second wife, Nicole, a blonde, white woman. Quickly, the media labeled him a *beast*,¹⁹⁶ with *Time* Magazine going so far as to darken the photograph of him on its cover.¹⁹⁷ Arguably, the fear expressed by some whites, especially women, was that O.J. unpunished threatened all white women, much like the black men portrayed in D.W. Griffith’s film.

A more recent example is the fierce reaction of some Americans to public disclosures about the extent of military race-based segregation during World War II when the United States was fighting to “make the world safe for democracy.”¹⁹⁸ When Marvel Comics published *Truth: Red, White and Black*, the first in a series of comic books dealing with Jim Crow in the American military, the company was attacked by people who refused to believe the extent of hard core racial segregation during the war.¹⁹⁹ Thus, at the very least, more concerted efforts at re-educating Americans about slavery, the Civil War, Reconstruction and the legacy of legalized anti-black racism are needed. A few films and television series, however, are insufficient to counter two centuries of anti-black propaganda. Re-education, endorsed by the national government, has to occur on some truly national scale.

There are other related reasons why re-education about slavery and the Civil War is needed. Today, old plantations, sites of slave

195. See, e.g., Carl Chancellor, *Few Black Americans Regard Simpson as a Role Model*, DALLAS MORNING NEWS, June 22, 1994, at 21A; see also Evelyn C. White, *Race, Success, Guilt Trips and ‘Giving Back’: What Did O.J. ‘Owe’ Other Blacks?*, S.F. CHRON., Sept. 12, 1994, at A1 (explaining that some blacks feel O.J. “forgot his roots”).

196. See, e.g., Stanton Peele, *Simpson Letter Shows Little Feeling*, SUN-SENTINEL (Fort Lauderdale, Fla.), June 26, 1994, at 4G; Anna Quindlen, *Now We All Know: O.J.’s Not a Hero, He’s a Wife-Beater*, CHI. TRIB., June 22, 1994, § 1, at 23; Sally Ann Stewart, *Documents Paint O.J. as Abusive*, USA TODAY, Jan. 12, 1995, at 1A.

197. See Howard Kurtz, *Time’s ‘Sinister’ Simpson: Cover Photo was Computer-Enhanced*, WASH. POST, June 22, 1994, at D1; Arlene Vigoda, *‘Time’ Replies*, USA TODAY, June 28, 1994, at 1D.

198. This was one of the most popular slogans associated with that war. See generally A. Leon Higginbotham, Jr. et al., Shaw v. Reno: *A Mirage of Good Intentions with Devastating Racial Consequences*, 62 FORDHAM L. REV. 1593, 1611 (1994).

199. See, e.g., Brent Staples, *Reliving World War II With a Captain America of a Different Color*, N.Y. TIMES, Dec. 1, 2002, § 4 (Magazine), at 8. The first issue focuses on the origin of Captain America, a comic book hero popular during World War II, by introducing a black Captain America. *Id.* Staples writes that Axel Alonso, the series editor, “has been dismayed by the depth of ignorance surrounding the subject and the fierceness with which people have attacked the project.” *Id.*

labor and exploitation, are being recast as resort areas.²⁰⁰ The plantation label also is attached to new housing developments in the South. Thus, many young children, unaware of our past, will grow up associating *plantations* with fun filled family vacations, not the enslavement and exploitation of black Americans.

Better education of the citizenry about the realities of slavery, the distortion of the Civil War, the Reconstruction and the Jim Crow eras, however, will not eliminate white resistance to black reparations discussions. Many Americans who have some understanding of slavery, the Civil War and the Reconstruction era still see events of these times as too remote from the early twenty-first century in which we live. Some whites, even when faced with extremely strong evidence, are unwilling to acknowledge the exploitation of black Americans by their ancestors. Perhaps one of the most well known examples concerns the refusal of most "white" descendants of Thomas Jefferson to recognize the Hemings family, descendants of Jefferson's off-spring with Sally Hemings, his mixed-race, slave mistress and half-sister to Jefferson's late wife.²⁰¹ Guilt, denial, and an unwillingness to give up the privileges that attach to whiteness in America make meaningful racial reconciliation difficult.

IV. SELF-HEALING

A. *The Need for Black Self-Healing*

1. Redefining Racist

A few white psychologists writing anecdotal personal essays speculate that American individualism also prevents whites from

200. For example, the Disney World amusement complex includes a hotel with an "ersatz Louisiana plantation" theme. Nancy Sharkey, *Days and Nights in Disney World*, N.Y. TIMES, Dec. 6, 1992, at E8. In the Caribbean, you have places like the New Plantation in St. Marthe, Guadeloupe, built on the site of a former sugar plantation. Stanley Carr, *What's New Under the Sun*, N.Y. TIMES, Nov. 3, 1991, at E15. In retirement and resort communities like Hilton Head, South Carolina you have places like Wexford Plantation, a development built around a canal, and Port Royal Plantation. Albert Scardino, *A Gust of Bankruptcy and Scandal Rattles Elegant Hilton Head Island*, N.Y. TIMES, Mar. 15, 1987, at C1.

201. Lucian K. Truscott IV, *The Reunion Upon a Hill*, N.Y. TIMES, July 10, 2003, at A23. The link of the Hemings descendants to Jefferson was strengthened when, in 1998, DNA evidence supported the claim of at least one branch of the family. *Id.* Rhonda Magee calls this type of re-education "cultural equity," increasing awareness of black Americans' real social and economic contributions to this country's development. Magee, *supra* note 3, at 874-75.

being more reflective about the reality of learned racism.²⁰² One psychologist posits that, in the late twentieth and early twenty-first centuries, most whites consider racist behavior socially unacceptable and tend to view a few *bad* whites as racist.²⁰³ Thus, they avoid characterizing aspects of their own behavior, such as avoiding blacks, as racist.²⁰⁴ The psychologist concludes that “racism is not primarily the result of individual personal failures . . . but a *collective inheritance* of all of us who are [w]hite Americans.”²⁰⁵

Studies suggest that whites avoid recognizing aspects of their behavior as a form of racism because today racism is considered

202. See, e.g., James M. Croteau, *One Struggle Through Individualism: Toward an Antiracist White Racial Identity*, 77 J. COUNSELING & DEV. 30 (1999). Some legal scholars agree as well. Alfred Brophy writes:

On moral issues, as on legal ones, Americans often emphasize personal fault. This may be yet another remnant of Puritan thought in American culture This emphasis on personal moral culpability parallels American law’s liberalism, which seems to deny remedies unless a victim can trace fault back to an identifiable perpetrator. Each generation, it seems, must stand on its own – or at least is not liable for the debts of the previous generation, even if it is entitled to the benefits bequeathed to it.

Brophy, *supra* note 6, at 548. Thus, Brophy argues: “In the context of reparations for slavery there are . . . two ideologies working in tandem to limit public support. The first is racism. The second is the idea that people must succeed or fail on their own merits.” *Id.* Brophy calls for what he characterizes as “a rhetoric of public responsibility . . . [the] use of the community’s resources to repair damage done, even when there is no fault on the part of the community.” *Id.* at 543.

203. Croteau, *supra* note 202, at 30.

204. The author writes:

Seeing racism solely through the lens of individualism was an unforgiving perspective that failed to take into account the reality of socially learned racism. . . .

...

... Those of us who recognized racism in the world and wanted to abandon it all shared a similar struggle with shame, guilt, wanting to be seen as nonracist, fear of “screwing up,” and defensiveness about being told we have acted in a racist manner.

Id. at 30-31.

Suzanna Sherry, a white law professor, invoking the myth of black men as rapists, is quoted as saying “she would rather be ‘snubbed’ [by a black man] than raped” in reaction to a description of a black man’s resentment when a white woman with a baby crosses the street to avoid him. JODY DAVID ARMOUR, *NEGROPHOBIA AND REASONABLE RACISM: THE HIDDEN COSTS OF BEING BLACK IN AMERICA* 53 (1997). Even black women, although not closely associated in white minds with violence, are not immune from the taint of criminality. Professor Armour recounts the story of a black couple who attend a movie in Times Square. The husband left his five-month-pregnant wife outside the theater to retrieve their car. While he was gone, his wife was arrested and charged with prostitution because she was an unescorted black woman in Times Square at 11 p.m. *Id.* at 47-48.

205. Croteau, *supra* note 202, at 31 (emphasis added).

deviant behavior.²⁰⁶ The dominant perception of a “racist” is only the most extreme example—a person who rabidly hates, often to the point of violence, persons from other racialized groups. Naturally, no one wants to be labeled as a racist. There is a basic psychological need to believe oneself to be “good”—the inborn, positive self concept. As a result, a white person who believes that racism is wrong will have trouble admitting that her own acts, though not motivated by racial hatred normally attributed to Klansmen or Nazis, can still be classified as racist.²⁰⁷ As long as there is a singular concept of racist and racism, it will be very difficult for white Americans to acknowledge their own acts of racism.²⁰⁸

For example, Mississippi Senator Trent Lott’s fitness to serve as Senate Majority Leader was questioned only after he remarked that had rabid segregationist Senator Strom Thurmond been elected President in 1948, the country “wouldn’t have had all these problems over the years.”²⁰⁹ Ultimately, public opinion forced Senator Lott to resign his position as Senate Majority Leader.²¹⁰ But it was his record on civil rights,²¹¹ rather than his racially insensitive praise of Strom Thurmond, that makes him what society today considers a “hardcore” racist. Yet the media’s focus on his remarks, rather than on his long record of opposition to civil rights for black Americans, probably caused many white Americans to be reluctant to discuss race, for fear of similar misstatements.²¹²

206. Barbara Trepagnier, *Deconstructing Categories: The Exposure of Silent Racism*, 24 SYMBOLIC INTERACTION 141, 142 (2001).

207. To overcome this problem, James Croteau suggests that white Americans must “discover” how the implicit American ideology of whiteness collectively privileges those *raced* as white, and with the help of other whites, come to terms with white racism. Croteau, *supra* note 202, at 31. He continues, saying that the dominant mode of thinking for most whites is “an exclusively individualistic worldview . . . [and this way of thinking] is an impediment to [w]hite racial identity development.” *Id.* at 32.

208. Several legal scholars write about unconscious or unintentional racism. *See, e.g.*, Armour, *supra* note 27; Barbara J. Flagg, “Was Blind, But Now I See”: *White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953, 955-57 (1993); Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987).

209. Helen Dewar and Mike Allen, *Lott Resigns as Senate GOP Leader*, WASH. POST, DEC. 21, 2002, at A1.

210. Dewar and Allen, *supra* note 209.

211. David E. Rosenbaum, *Lott Opposed Many Bills With Links To Civil Rights*, N.Y. TIMES, Dec. 14, 2002, at A15; *Sen. Lott’s New Spin*, WASH. POST, Dec. 14, 2002, at A24. Senator Lott voted against extending the Voting Rights Act in 1981, creating a federal holiday to honor Martin Luther King in 1983 and the Civil Rights Act of 1990. Rosenbaum, *supra*. He supported a proposed constitutional amendment prohibiting the use of busing to achieve racial integration. He is closely associated with the Council of Conservative Citizens, a white supremacist group. *Id.*

212. Journalist Peter Beinart is correct in saying that had Trent Lott’s praise of Strom Thurmond “been genuinely at odds with [Lott’s] civil rights record over the last

In reality, there is a continuum of racist behaviors from overt intentional racist acts designed to harm blacks to *silent racism*.²¹³ Studies suggest, however, that racism is normal, typical, not abhorrent, and there is a “strong relationship between racist thoughts and racist behavior, regardless of good intentions.”²¹⁴ Law professor Charles Lawrence calls this *unconscious racism*.²¹⁵ Surinamese/Dutch sociologist Philomena Essed calls this behavior *everyday racism*.²¹⁶

This continuum of racism explains why some whites are *uncertain* about the need for black reparations while other whites are *ambivalent* about black reparations. There is an important difference between uncertainty and ambivalence. White uncertainty about black reparations may come from lack of information. Theoretically, at least, their uncertainty can be resolved by education and increased access to information about slavery, segregation and the continuing legacy of these policies. Conversely, white ambivalence toward black reparations suggests “simultaneous conflicting feelings”²¹⁷ about the topic. Their conflicting feelings will not be reduced or resolved by more information that conflicts with their core beliefs.²¹⁸ Even whites who support racial equality may still have “a residual core of aversion racism,”²¹⁹ and as a result, be less supportive of black reparations.

30 years, the story probably would have blown over.” Peter Beinart, *Clueless*, NEW REPUBLIC, Dec. 30, 2003-Jan. 6, 2003, at 6. Instead, Lott’s remark provided the impetus to examine Lott’s political career and disclose “a pattern of neosegregationism that stretches throughout his political career.” *Id.*

213. Silent racism consists of “unspoken negative thoughts, emotions, and attitudes regarding African Americans and other people of color on the part of white people. Silent racism results from misinformation and negative ideas about minority groups that permeate the culture.” Trepagnier, *supra* 206, at 142. According to Trepagnier, silent racism is “limited to thoughts and ideas, silent racism does not refer to antiblack statements or actions that result from them.” *Id.*

214. *Id.*

215. Lawrence, *supra* note 208, at 339-43.

216. Everyday racism involves “routine actions that go unquestioned by members of the dominant group which in some way discriminates against members of a racial or ethnic category.” Trepagnier, *supra* 206, at 144. (citing PHILOMENA ESSED, UNDERSTANDING EVERYDAY RACISM (1991)). Everyday racism involves actions whereas silent racism involves thoughts.

217. THE OXFORD DESK DICTIONARY, AMERICAN EDITION 17 (Laurence Urdang ed., 1995).

218. R. Michael Alvarez & John Brehm, *Are Americans Ambivalent Towards Racial Policies?*, 41 AMER. J. POL. SCI. 345, 346 (1997). Studies suggest that “conflicting core values undercut racial policy [designed to remedy inequality].” *Id.* at 347. This study “found that the variability in [white] attitudes toward racial policy grew largely out of uncertainty.” *Id.* at 369.

219. *Id.* at 347 (studies suggest that “‘modern’ racism denotes a zone of ambivalence about race”).

Whites and nonwhites must recognize and accept that there is a continuum of racism, making some behaviors and beliefs more damning than others. Racist behaviors must be examined and classified before labeling someone as racist. Adopting this approach to racist behavior is appropriate given our collective inheritance of white racism, and necessary to facilitate any dialog on reparations and movement toward racial healing. This means accepting that insensitive or unconscious behavior by whites, while a form of racism, does not necessarily indicate racial hatred and, instead, merits honest discussion rather than wholesale condemnation. As long as there is a perceived thirst to “out” anyone who makes racist remarks, most whites probably will not participate in an honest dialogue about their own acts of racism because of the personal and psychological risk involved.

Therefore, each American must recognize that we all are members of a highly racialized society. The first step toward racial healing must be recognition of a cultural inheritance that includes negative portrayals of racially subordinated groups, and that this inheritance, often absorbed unconsciously, affects our behavior. Once we recognize our culturally inherited racism, we can resist it more effectively. Until then, simply labeling whites as racist will not help bring whites to the reconciliation table and may only foster resentment.

2. Acknowledging Continuing Black Trauma

Blacks, on the other hand, have been and continue to be traumatized to varying degrees by persistent racial violence and intimidation.²²⁰ The economic and political suppression of blacks in the post-Civil War period “would not have been effective had it not been for the wholesale and brutal violence that rendered thousands of ex-slaves literally unable to know on which side of emancipation they had fared worst.”²²¹ The violence is well documented.

During the latter part of the nineteenth century and the first

220. Vincene Verdun lists among the various forms of emotional injury “the presumption of inferiority [and] devaluation of self-esteem.” Verdun, *supra* note 3, at 631-32. Randall Robinson links black American’s psychological harm to the loss of “[e]very artifact of the victim’s past cultures, every custom, every ritual, every god, every language, every trace element of a people’s whole hereditary identity. . . . It is a human rights crime . . . [that] produces victims *ad infinitum*, long after the active state of the crime has ended.” ROBINSON, *supra* note 10, at 216.

221. See, BELL, *supra* note 7, at 34-35. Historian Leon Litwack agrees noting the “barbaric savagery and depravity that so frequently characterized the assaults made on freedmen in the name of restraining their savagery and depravity—the severed ears and entrails, the mutilated sex organs, the burnings at the stake, the forced drownings, the open display of skulls and severed limbs as trophies.” *Id.* at 35 (quoting LEON LITWACK, *THE AFTERMATH OF SLAVERY* 276-77 (1979)).

half of the twentieth century, lynching²²² was a significant means of controlling the black community.²²³ No black person was immune; even women were lynched.²²⁴ State and federal courts did not protect black Americans from white mobs who used any reason, usually fabricated, to lynch a black person.²²⁵ Repeated entreaties to the

222. "In 1905 James Cutler stated that lynching was 'an illegal and summary execution at the hands of a mob, or a number of persons, who have in some degree the public opinion of the community behind them.'" Charlotte Wolf, *Constructions of a Lynching*, 62 SOC. INQUIRY 83, 83 (1992).

223. See MARK CURRIDEN & LEROY PHILLIPS, JR., *CONTEMPT OF COURT: THE TURN-OF-THE CENTURY LYNCHING THAT LAUNCHED 100 YEARS OF FEDERALISM* (1999) (discussing the 1896 lynching of Ed Johnson in Chattanooga, Tennessee and the law's response); PHILIP DRAY, *AT THE HANDS OF PERSONS UNKNOWN: THE LYNCHING OF BLACK AMERICA* (2002) (providing a historical account of the lynching of black people throughout America); RALPH GINZBURG, *100 YEARS OF LYNCHING* (1998); ELAINE SLIVINSKI LISANDRELLI, *IDA B. WELLS-BARNETT: CRUSADER AGAINST LYNCHING* (1998); *LYNCHINGS AND WHAT THEY MEAN: GENERAL FINDINGS OF THE SOUTHERN COMMISSION ON THE STUDY OF "LYNCHING"* (1931); *SOUTHERN HORRORS AND OTHER WRITINGS: THE ANTI-LYNCHING CAMPAIGN OF IDA B. WELLS, 1892-1900* (Jacqueline Jones Royster ed, 1996); STEWART E. TOLNAY & E. M. BECK, *A FESTIVAL OF VIOLENCE: AN ANALYSIS OF SOUTHERN LYNCHINGS, 1882-1930* (1995). Every year from 1882 until 1952 there was a recorded lynching of a black American, usually, but not exclusively, in the South. DRAY, *supra*, at 225. Postcards and other memorabilia from these lynchings, often public spectacles, circulated widely in the white community. See, e.g., JAMES ALLEN ET AL., *WITHOUT SANCTUARY: LYNCHING PHOTOGRAPHY IN AMERICA* (2000). Two social scientists speculate that in the six deep South states, lynchings increased as the economy worsened. E. M. Beck & Stewart E. Tolnay, *The Killing Fields of the Deep South: The Market for Cotton and the Lynching of Blacks, 1882-1930*, 55 AMER. SOC. REV. 526 (1990). Beck and Tolnay also argue that lynchings often occurred in the summer and might have been a way "to tighten the reins of control over the black population, especially during times when whites most needed black labor to work field of cotton or tobacco." E.M. Beck & Stewart E. Tolnay, *A Season for Violence: The Lynching of Blacks and Labor Demand in the Agricultural Production Cycle in the American South*, 37 INT'L. REV. OF SOC. HIST. 1, 22 (1992).

224. In 1904, black sharecropper, Luther Holbert, and his wife were lynched (burned) "by a lynch mob of more than 1000 white people." Barbara Holden-Smith, *Lynching, Federalism, and the Intersection of Race and Gender in the Progressive Era*, 8 YALE J. L. & FEMINISM 31, 31 (1996). In 1911, a mother and daughter were lynched by an Oklahoma mob. CHARLES FLINT KELLOGG, *NAACP: A HISTORY OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, VOL. I (1909-1920)* 212 (1967). Perhaps the most shocking lynching involving a black woman occurred in Georgia. In 1918, Walter White, a white-looking black man who had just joined the staff of the NAACP, witnessed several lynchings in Brooks and Lowndes Counties, Georgia. Walter White, *The Work of a Mob*, in *THE CRISIS READER* 345 (Sondra Kathryn Wilson ed., 1999). Included was the lynching of Mary Turner. *Id.* at 347. Her offense? She protested the lynching of her husband. *Id.* At the time, Mrs. Turner was eight months pregnant. *Id.* at 348. She was burned alive and her unborn child cut from her belly. *Id.* The child, born alive, "gave two feeble cries and then its head was crushed by a member of the mob with his heel." *Id.*

225. See, e.g., Holden-Smith, *supra* note 224, at 39-44 (stating that using rape to justify lynchings was not supported by any facts and noting that Southern states did not enforce anti-lynching laws); Kellogg, *supra* note 224, at 209-46.

federal legislature by well-respected black leaders proved fruitless.²²⁶ Lynchings of blacks, although less common today, still occur and trigger traumatic memories in many black Americans.²²⁷ Anti-black violence at the hands of non-blacks persisted into the 1960s and often occurred in response to attempts by black Americans to secure the basic rights of citizenship.²²⁸ Some argue that, in response to anti-affirmative action rulings and political racial conservatism, anti-black violence is reemerging.²²⁹

226. See KELLOGG, *supra* note 224, at 216-20, 227-32.

227. See, e.g., Carol Marie Cropper, *Black Man Fatally Dragged In a Possible Racial Killing*, N.Y. TIMES, June 10, 1998, at A16 (discussing the 1998 lynching of James Byrd, Jr. in Texas); Paul Duggan, *Racist Convicted In Texas Murder: Kidnap-Dragging Is Death Penalty Case*, WASH. POST, Feb. 24, 1999, at A1 (same). On July 25, 1997, two white men, after an evening of drinking, doused with gasoline their fellow party-goer, "G.P." Johnson, a black American ex-marine. Earlier in the evening, one of the men had bragged that he was "going to kill a nigger." The two white men set Johnson on fire and then decapitated his charred corpse with a splitting maul. Johnson was alive when he was set afire, but died upon decapitation. His killers buried his head underneath his body in a 13-inch-deep hole. Diane Struzzi, *A Trial in Grayson County: A Crime Against the Community*, ROANOKE TIMES & WORLD NEWS, Feb. 15, 1998, at A1; Michael Paul Williams, *Slaying Case in Grayson Stirs Questions*, RICHMOND TIMES-DISPATCH, June 8, 1998, at B1. Despite the gruesomeness of the murder, the crime escaped national attention until the Congressional Black Caucus ("CBC") questioned why the killing was not being investigated as a hate crime and called upon President Clinton to intervene. See Rex Bowman, *Cullen Calls for Probe but Says Wait*, RICHMOND TIMES-DISPATCH, Aug. 20, 1997, at B4 (reporting on calls by victim's family's and Congressional Black Caucus' for the federal government to investigate the case); Diane Struzzi, *Determining the Hate in Crime: Grayson County Interracial Case Puts a Spotlight on How Hate Crimes are Defined*, ROANOKE TIMES & WORLD NEWS, Aug. 17, 1997, at B1 (stating that CBC called on President Clinton "to keep a watchful eye on the case").

228. Consider three well known examples: the 1963 bombing that killed four black teenage girls at the 16th Street Baptist Church in Birmingham, Alabama, the site of civil rights rallies; the 1964 kidnapping and murder of three civil rights workers, Michael H. Schwerner, Andrew Goodman and James E. Chaney, in Mississippi by white supremacists for trying to get black Mississippians to register to vote; and the 1968 assassination of Martin Luther King, Jr. In the case of the 1964 murders and kidnapping, although only Chaney was black, the message sent by the killings clearly was directed at the black Mississippi community. Consider also the brutal murder and mutilation in 1955 of a young black Chicago teenager, Emmett Till, in Money, Mississippi. His crime was whistling at a white female store clerk. See STEPHEN J. WHITFIELD, *A DEATH IN THE DELTA: THE STORY OF EMMETT TILL* (1988). Some claim that the killing of 14 year-old Till was triggered by white reaction to the United States Supreme Court's decision in *Brown v. Board of Education*, 347 U.S. 483 (1954). See, e.g., ANTHONY LEWIS AND THE NEW YORK TIMES, *PORTRAIT OF A DECADE: THE SECOND AMERICAN REVOLUTION* 210 (1964). Following the Supreme Court's decision in *Brown*, a white mob attempted to attack nine black school children who were desegregating a Little Rock, Arkansas high school. See *Cooper v. Aaron*, 358 U.S. 1 (1958) (rejecting the argument that fear of racial violence justified delaying desegregation in the high school).

229. Sumi Cho writes:

State and local law enforcement officials often participate in violence directed at black Americans.²³⁰ Contemporary examples of police violence can be recalled by simply mentioning two well known black victims, Rodney King and Abner Louima.²³¹ Ironically, both acts of violence by white police officers occurred outside the South. The 1992 beating of Rodney King occurred in Los Angeles and the 1997 beating and sodomizing of Abner Louima occurred in a New York City police station.²³²

In addition to actual violence is the threat of violence implicit in

The period following Reconstruction and the onset of segregation produced an upsurge in racial violence as spectacle. White men, women and children attended lynchings of African Americans as public sporting events designed to entertain and excite. The denial of racial guilt and the affirmation of whiteness under Redemption unleashed a social atmosphere in which open season would be declared against Black bodies. Following anti-affirmative action victories and legal and political endorsements of racial home rule, a disturbing pattern of spectacular racial violence is reemerging. On March 21, 1997, three white youths brutally beat 13-year-old Lenard Clark nearly to death for transgressing racial boundaries and playing basketball in the "wrong" neighborhood. The racially-motivated attack, during which racial epithets were used, left Clark permanently brain damaged.

Cho, *supra* note 9, at 166 n.481. In addition to these spectacles of racial violence that evince the return of a dominant and arrogant whiteness, more subtle examples abound. Following the trial in the Lenard Clark beating case, an angry crowd erupted after Judge Daniel Locallo sentenced lead defendant, Frank Caruso, Jr., to eight years in prison. The angry crowd criticized the sentence as "compromised by racial politics." Terry Wilson & John Chase, *Angry Crowd Erupts as Clark Sentence Upheld: Judge Refuses to Give Ground on Caruso's Term for Beating*, CHI. TRIB., Oct. 23, 1998, at 1.

When Locallo upheld the sentencing of the instigator in a later hearing, he was jeered by a crowd that brought the courtroom to the brink of disorder. This story is significant in that the angry crowd consisted of Caruso's white defenders who argued that the eight-year sentence was too harsh! *See id.* As the defendant's father, Frank Caruso, Sr., told Judge Locallo, "I feel the scales of justice weren't tipped. The robe was actually ripped off the lady." *Id.* A woman in the angry crowd promised that "the Italians will fight Judge Locallo." *Id.*; *see also* Janan Hanna, *Deal Lets 2 in Clark Case Stay out of Jail: Suspects in Beating of Black Youth Agree to Offer of Probation*, CHI. TRIB., Oct. 20, 1998, at 1; *Imperfect Justice for Lenard Clark*, CHI. TRIB. Oct. 22, 1998, at 26. Two of Clark's attackers received probation, and one was sentenced to eight years in prison. Janan Hanna, *2 Receive Probation in Clark Beating: Jasas, Kwidzinski Plead Guilty to Battery Charges*, CHI. TRIB., Oct. 19, 1998, at 1. Part of the reason the prosecutor failed to convict Caruso on the attempted murder charge and agreed to plead out with the other two was due to severe witness problems, *i.e.* one was murdered and another disappeared. *Id.*

230. *See, e.g.,* Lee Sigelman et al., *Police Brutality and Public Perceptions of Racial Discrimination: A Tale of Two Beatings*, 50 POL. RES. Q. 777 (1997) (discussing public perceptions of racial discrimination, in the beating of Rodney King and killing of Malice Green by police); Jack Maple, *Police Must be Held Accountable*, NEWSWEEK (June 21, 1999), at 67 (discussing police brutality in light of the Abner Louima case).

231. *See generally supra* note 230.

232. *Id.*

the racial profiling of black motorists.²³³ An extreme example of racial profiling occurred in the predominately white City of Oneonta, New York, where *every* adult black male in the town was found and questioned by the police after a white woman reported that she had been robbed in her home by a young black man.²³⁴ The State University of New York College at Oneonta assisted the police by turning over a list of all its black male students.²³⁵ The police action was challenged unsuccessfully in the courts.²³⁶

This reality, the potential of anti-black violence and threats of violence, *chills* “[b]lack participation in core community activities. . . . Blacks who do venture into the public arena are compelled to stifle self-expression and move about in a withdrawn, timorous fashion lest they appear threatening to some anxious gun-toting pedestrian or subway rider.”²³⁷ The microaggressions experienced almost daily by black Americans reinforce a second class citizenship, denying blacks “equitable participation in [the] social and commercial existence” of society, and continue “a *de facto* system of apartheid” by private actors.²³⁸ However, merely recalling these events does not necessarily lead to racial reconciliation.

Once more we see the impact of culturally ingrained stereotypes on people’s behavior. Anti-black movies with anti-black images create and reinforce negative stereotypes about blacks. These stereotypes are absorbed into our cultural memory and, at a minimum, into the subconscious of whites, contributing to their racist behavior. Today, stories about racist police and black criminals circulate broadly in the media and morph into new stereotypes that people unconsciously absorb. On one hand, black Americans fear racial profiling by police. On the other, many white women are said to clutch their purses tighter when they approach black men on the sidewalks.²³⁹ Thus, ingrained racial cultural images affect our behavior, deterring many Americans from participating more fully in the community.

233. See, e.g., David A. Harris, *The Stories, the Statistics, and the Law: Why “Driving While Black” Matters*, 84 MINN. L. REV. 265 (1999); Katheryn K. Russell, *“Driving While Black”: Corollary Phenomena and Collateral Consequences*, 40 B.C. L. REV. 717, 717 (1999) (stating that “in the legal arena, Blackness itself faces increasing criminal penalty”).

234. For a discussion of this case, see Bob Herbert, *In America: Breathing While Black*, N.Y. TIMES, Nov. 4, 1999, at A29.

235. *Id.*

236. *Brown v. City of Oneonta*, 221 F.3d 329, 334 (2d Cir. 2000). The Second Circuit affirmed the district court’s summary dismissal of the equal protection and related statutory claims, but refused, in part, the dismissal of the Fourth Amendment claim. *Id.* at 335.

237. ARMOUR, *supra* note 204, at 52.

238. *Id.* at 56.

239. See *supra* note 204.

Unfortunately, there is no formula for enabling victims, survivors, beneficiaries, perpetrators, and bystanders of racial subordination to transcend their anger, resentment, or fear of each other. The South African experience suggests that providing a forum for truth-telling about the most severe past wrongs was cathartic “for some victims and survivors” who were able to verbalize past traumas.²⁴⁰ Truth-telling forums also remind us “of the capacity of apparently decent people to sink to such a level where they can commit [or silently condone] the most atrocious evil.”²⁴¹ Unresolved is whether truth commissions are really healing, or whether truth often is sacrificed to insure peace. Arguably, the latter occurred in the United States where the truth about slavery and Reconstruction was sacrificed for the sake of regional unity among white citizens.

B. *National Racial Self Healing*

South African Jan van Eck questions whether reconciliation is possible where both groups reside in the same space and where you have two conflicting groups: a subordinate group with a culture of victimization; and a dominant group with collective guilt.²⁴² The dominant group may have no desire to reconcile, either because group members believe that their actions are justified, or because they are unable to handle or acknowledge their guilt. Subordinating practices may continue, thus imposing another barrier to reconciliation, because subordinate group members are reluctant to trust the dominant group. This description sounds a lot like the current situation in the United States, except the wrongs—slavery

240. Charles Villa-Vicencio, *Getting on with Life: A Move Towards Reconciliation*, in LOOKING BACK REACHING FORWARD: REFLECTIONS ON THE TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA 199, 203 (Charles Villa-Vicencio & Wilhelm Verwoerd eds., 2000); see, Ifill, *supra* note 9 (proposing that communities that experienced lynchings should hold truth and reconciliation commissions as a form of education and racial reconciliation). However, there are cautionary tales about what happens to survivors whose stories are not addressed by these truth commissions. For a literary example, see ARIEL DORFMAN, *DEATH AND THE MAIDEN* (1991) (describing Chile's attempt to recover from the brutal regime of General Augusto Pinochet).

241. Villa-Vicencio, *supra* note 240, at 203 (emphasis omitted).

242. Jan van Eck, *Reconciliation in Africa?*, in AFTER THE TRC, *supra* note 12, at 82-83. Karl Jaspers, discussing German guilt, notes that there are several types of guilt: “criminal guilt, political guilt, moral guilt and metaphysical guilt.” Boraine, *supra* note 12, at 77. Ariel Dorfman in speaking about post-Pinochet Chile writes:

How can those who tortured and those who were tortured coexist in the same land? How to heal a country that has been traumatized by repression if the fear to speak out is still omnipresent everywhere? And how do you reach the truth if lying has become a habit? How do we keep the past alive without becoming its prisoner? How do we forget it without risking its repetition in the future?

Ariel Dorfman, *Afterword From Death And The Maiden*, 85 SW. REV. 350, 352 (2000).

and *de jure* race-based segregation—are further in the past.

Most whites don't trust blacks. . . . Most whites don't like blacks. Most blacks are deeply suspicious of whites, with some cause. We should not feel guilty about this. We are a product of divisions imposed upon this society and it will take a very long time before we begin to like each other, and more importantly, before we begin to trust and respect one another. We must rid ourselves of these feelings of constant guilt and resentment. We should begin to move away from the stereotypes of race and prejudice, and proceed to something new.²⁴³

These words, which seem to describe contemporary race relations in the United States, were written by Alex Boraine, former Vice Chairperson of the TRC, about the immediate post-apartheid era in South Africa.

Reconciliation in South Africa, Jan van Eck argues, was predicated on both groups reaching a compromise, some “mutually acceptable political settlement.”²⁴⁴ Since we in the United States have reached no similar settlement, South Africa may not be an appropriate racial reconciliation model for the United States. Yet, Boraine's characterization of the racial climate in contemporary South Africa is instructive. Truth-telling and reconciliation is an ongoing process and does not necessarily bring about immediate changes in racial attitudes.

In addition, a major criticism of the Truth and Reconciliation Commission is that there was no racial reconciliation.²⁴⁵ Although a valid criticism, others assert that while exposing the “truth may not always lead to reconciliation, there can be no genuine, lasting

243. Boraine, *supra* note 12, at 80.

244. van Eck, *supra* note 242, at 85.

245. Boraine, *supra* note 12, at 74 (quoting an article by R.W. Johnson in the *New York Times*, which argued that the Commission's report exposed the truth, but said little about reconciliation). Frederik Van Zyl Slabbert, Chairperson of the Open Society Initiative for Southern Africa, agrees, citing the symbolic apology and forgiveness of F.W. de Klerk and Nelson Mandela during the inaugural for the new South Africa, and notes that de Klerk's subsequent autobiography expressed no remorse, but only the expectation that forgiveness was his due. Frederik Van Zyl Slabbert, *Truth Without Reconciliation, Reconciliation Without Truth*, in *AFTER THE TRC*, *supra* note 12, at 65. Compare, however, these comments with those of Boraine and former TRC Commissioner, Dumisa Ntsebeza, who both assert that reconciliation was never the purpose of the TRC. Boraine, *supra* note 12, at 74; Dumisa Ntsebeza, *A Lot More To Live For*, in *AFTER THE TRC*, *supra* note 12, at 104-05. Commissioner Ntsebeza continues: “[R]econciliation is not an easy concept. It is confusing. . . . [C]onfused. . . . [C]omplex. It makes a traumatic demand on those who are called on to forgive and forget. . . . The concept should not become a political football. It deals with people's suffering.” *Id.* at 105-06. It also should be noted at this point that the TRC's mandate was very narrow, covering only specific human rights violations like killing, torture, abduction and severe maltreatment. Villa-Vicencio, *supra* note 240, at 205.

reconciliation without truth.”²⁴⁶ Of course, another problem is determining whose truth will be the basis for forgiveness and reconciliation. Since there is no such thing as “verifiable scientific truth,” any truth-finding commission faces the problem of how to determine the truth.²⁴⁷ The closest modern societies can come to verifiable truth is truth determined through the prevailing judicial system.²⁴⁸ Yet black Americans have ample reason to be wary of relying on courts to enforce their citizenship rights.

One writer suggests that a better means of exposing the truth is “through research, drama, literature, journalism and film,”²⁴⁹ in other words, counter-cultural productions. Artist and musician DJ Spooky’s work in progress, *Rebirth of a Nation*, which previewed, in May 2003, at the American Museum of Moving Images in New York City, is an example of counter cultural production. According to the essay that accompanies his project:

“Birth of a Nation” focuses on how America needed to create a fiction of African American culture in tune with the fabrication of ‘whiteness’ that undergirded American thought throughout most of the last several centuries: it floats out in the world of cinema as an enduring albeit totally racist—epic tale of an America that, in essence, never existed. . . . By remixing the film along the lines of DJ culture, I hoped to create a counter-narrative, one where the story implodes on itself, one where new stories arise out the ashes of that explosion. These are some of the images that are taken from the film and well . . . it’s a bit hectic. . . .²⁵⁰

Cultural studies scholar Elazar Barkan argues that “the teaching about slavery, the growing tourism surrounding the history of slavery, and the expanding cultural production from movies to museums all increase the awareness of the need to amend this

246. Boraine, *supra* note 12, at 74. Boraine continues: “So, from the beginning, there was an acceptance that the task of reconciliation is too vast, too all-pervasive, too daunting for a single commission to make a reality.” *Id.* Van Zyl Slabbert counters that “[t]he assumption that truth leads to reconciliation or that it is a necessary prerequisite is based on sentimental theological assumptions that very often bears no relation to reality.” Van Zyl Slabbert, *supra* note 226, at 70. He argues that there can be reconciliation without truth. *Id.*

247. Van Zyl Slabbert, *supra* note 245, at 68. But Commissioner Ntsebeza, a lawyer, counters that the TRC was never intended to operate like a court of law but relied on verification by Commission investigators and researchers, and corroborating testimony. Ntsebeza, *supra* note 245, at 104.

248. Van Zyl Slabbert, *supra* note 245, at 68.

249. *Id.* at 71.

250. PAUL D. MILLER, DJSPOOKY.COM, REBIRTH OF A NATION, at <http://www.djspooky.com/art.html> (last visited Sept. 18, 2003); see also Deepti Hajela, *Racist Classic Remixed into ‘Rebirth,’* N.W. IND. TIMES, June 6, 2003, available at http://www.nwintimes.com/articles/2003/06/06/features/on_the_go/94c967035dafaaca86256d3c0052b2fa.txt.

historical injustice.”²⁵¹ To aid this re-education process, governmental and private entities might set aside funds for these truth-telling forms of cultural production. Government also might provide access to public spaces to permanently display or air these counter cultural works.

The past decade gave us a wealth of ground-breaking scholarship on the consequences of slavery, *de jure* and *de facto* segregation.²⁵² Rather than rely on a government commission on slavery that easily can become politicized,²⁵³ have its message diluted or distorted, and hinder rather than foster meaningful reconciliation, the new slavery and Jim Crow scholarship should be encouraged and included in school curricula. The federal government, and states where slavery was legal during the colonial and post-independence eras, should underwrite further scholarly research and promote dissemination of accurate information about the eras. This information could be disseminated through documentary films, television programs, and exhibits. As discussed previously, the visual media has more influence in shaping public opinion than official pronouncements by the government. Since the media was effective in spreading the disinformation about slavery, Reconstruction and *de jure* segregation, it should be used to help reconcile the parties separated by the disinformation.

Finally, Alex Boraine argues that “[w]hile it may not be possible for an entire nation to be reconciled, perhaps there is a huge and awesome onus on leaders of nations to apologise [sic] symbolically, and then to move forward.”²⁵⁴ Thus, at some point a national apology for slavery and *de jure* segregation will be needed to set the stage for a more open public discussion on racial reconciliation in the United States.

C. *Racial Self Healing Through Praxis: Two Projects*

*“Emancipate yourselves from mental slavery, None but ourselves
can free our minds.”*²⁵⁵

An important component of the healing process is for victims

251. ELAZAR BARKAN, *THE GUILT OF NATIONS: RESTITUTION AND NEGOTIATING HISTORICAL INJUSTICES* 306 (2000).

252. See generally *supra* note 148.

253. The recent fight over President George Bush’s nomination of “conservative” Peter Kirsanow to the U.S. Civil Rights Commission to replace Victoria Wilson, “an independent who often sympathized with the panel’s Democrats” is an example of how an allegedly neutral agency can be politicized. Neely Tucker, *Judge Rejects Bush’s Pick for Civil Rights Agency*, WASH. POST, Feb. 5, 2002, at A1.

254. Boraine, *supra* note 12, at 78.

255. BOB MARLEY, *Redemption Song, on UPRISING* (Island Records 1980).

and survivors of racial subordination to reach a point where they have the ability to move forward. Moving forward, however, does not mean forgetting the past. It means not becoming obsessed or paralyzed by past and continuing racial subordination. This task “involves [victims, survivors and their descendants] taking responsibility for their own lives as well as the future direction of the nation.”²⁵⁶ Thus, just as part of the racial healing process for black Americans is to realize that reparations are due them,²⁵⁷ another important component is self-healing by moving forward.

There are ways of moving forward without forgetting the past, such as formal observations of collective traumatic experiences. Consider, for example, the Jewish observation of Passover as a way of remembering the enslavement and release of the Israelites by the Egyptians and their subsequent exodus from Egypt approximately 3,000 years ago. Perhaps the increasingly common local celebrations of “Juneteenth”²⁵⁸ may signal the beginnings of a similar cultural holiday by black Americans that, while acknowledging the past enslavement of our ancestors, affirmatively celebrates our leaving that status (and some of its baggage) behind. It is somewhat ironic, however, that the Holocaust Museum in Washington, D.C., reminds us of horrific events that occurred outside this country, yet there is continued resistance to a National Slavery Museum.²⁵⁹ Just as we need to memorialize the horrors of slavery, we must similarly memorialize the horrors of *de jure* race-based segregation. Thus, the celebration of Martin Luther King’s birthday is a way of not only

256. Villa-Vicencio, *supra* note 240, at 202.

257. Randall Robinson, in his book, *The Debt: What America Owes to Blacks*, says that black Americans must first believe that they are entitled to reparations “on a debt that is old but compellingly obvious and valid,” before other Americans will understand their demand. ROBINSON, *supra* note 10, at 231. “[M]uch of reparations scholarship has the ultimate goal of empowering the African American community, even if there is question about how that might be best accomplished.” Brophy, *supra* note 6, at 525.

258. Juneteenth is the celebration by black Americans of the formal announcement of the emancipation of slaves in Texas on June 19, 1865, two and one-half years after President Abraham Lincoln issued the Emancipation Proclamation “freeing” all enslaved blacks in the territories in rebellion against the Union. Recently, Juneteenth celebrations have moved beyond Texas to other communities in and outside of the United States. See JUNETEENTH.COM, WORLD WIDE CELEBRATION, at <http://www.juneteenth.com> (last visited Sept. 18, 2003).

259. In a letter to the editor, noted social historian, Eric Foner, wrote: “Americans are more comfortable remembering others’ violations of human rights than our own. . . . When will we see . . . memorials to the victims of slavery, our homegrown crime against humanity?” Eric Foner, Editorial, *Remember Our Slaves*, N.Y. TIMES, July 22, 2002, at A18 (commenting on the opening of a memorial in New York City to victims of the Irish famine of 1845-52).

honoring an important humanitarian, but also acknowledging the existence of *de jure* race-based segregation and the role of black Americans in bringing about an end of that practice.

Self-healing is a way to reclaim the dignity and humanity that the legacy of anti-black bias and continuing daily microaggressions²⁶⁰ try to deny us. Self-healing is a means of redemption from the mental trauma of slavery and American styled anti-black racism. It is a means to restore individual and group dignity.

Indigenous and Aboriginal communities in the United States, Canada, Australia, and New Zealand often speak about the need to heal the multi-generational trauma of their racialized subordination.²⁶¹ This trauma, according to a report of the Royal Commission on Aboriginal Peoples in Canada, stems from the acculturative stress experienced by individual members of the non-dominant society.²⁶² This stress is triggered "when pressures to assimilate fail, and result in the marginalization of Aboriginal peoples, with the accompanying social and psychological problems of cultural identity loss and confusion, addiction, abuse and inceration [sic]."²⁶³

Stress is less likely where individuals adopt a strategy that allows them to develop a bicultural identity where they "maintain the integrity of their Aboriginal culture, and as Aboriginal peoples are accepted as an integral part of the larger society."²⁶⁴ The report concludes that both the dominant community and Aboriginal people each has a responsibility to repair the situation.²⁶⁵ Because the relationship between these two cultures is characterized by non-Aboriginal domination and Aboriginal resistance, the dominant society "must draw back from this pervasive domination and provide a context (political, economic, social and cultural) in which Aboriginal peoples can begin to recover. In addition, Aboriginal peoples have the

260. See generally Peggy C. Davis, *Law as Microaggression*, 98 YALE L.J. 1559, 1565-66 (1989) (arguing that microaggressions are subtle, stunning, often automatic, and non-verbal exchanges between whites and blacks that stem from the mental attitude of presumed superiority of whites and inferiority of blacks).

261. See generally *The Path to Healing: Report of the National Round Table on Aboriginal Health and Social Issues*, available at <http://www.ubcic.bc.ca/RCAP.htm> (last visited Sept. 23, 2003).

262. J.W. Berry, *Aboriginal Cultural Identity* (Executive Summary of the Royal Commission on Aboriginal Peoples, Urban Perspectives Research), available at <http://www.brandonu.ca/native/News9606.html> (last visited Aug. 12, 2003); see also Union of British Columbia Indian Chiefs, *Royal Commission on Aboriginal Peoples: Interpreting the Mandate*, at <http://www.ubcic.bc.ca/RCAP.htm> (last visited Aug. 12, 2003).

263. Berry, *supra* note 262.

264. *Id.*

265. *Id.*

responsibility for their own healing, within this new context, and . . . the opportunity to participate in these new relationships on their own cultural terms.”²⁶⁶ This analysis applies equally to black Americans.

Black Americans live as racialized others, but in the most powerful nation in the world. Thus, despite their subordinated status, black Americans have power, by virtue of their American citizenship, to help other subordinated groups in both the domestic and international spheres. Yet, most black Americans seem reluctant to support other non-white, racialized groups. A troubling domestic example is black silence in the face of the persistent use of American Indian mascots by high school, college and even professional athletic teams.

Five professional sports team currently have American Indian names and mascots: the Atlanta Braves, Chicago Blackhawks, Cleveland Indians, Kansas City Chiefs, and Washington Redskins. The accompanying mascots . . . represent stereotypical and racist depictions of American Indians. In addition, team mascots, players, and cheerleaders engage in “sham rituals”—war songs, dances, and actions like the “tomahawk chop”—that not only manifest blatant racism, but also constitute direct attacks on American Indian religious practices. . . . It is clear that the analogous use of any other racial or ethnic group as a sports team mascot would be considered “socially repugnant” and reprehensible.²⁶⁷

Indigenous people, characterized as Native Americans or American Indians, have been unable to persuade a majority of Americans that the use of these mascots by athletic teams is offensive and insensitive. Advocacy groups of Indigenous people argue that other racialized groups, especially black Americans, would not tolerate similar use of demeaning names or mascots by sports organizations.²⁶⁸ They are right; thus, black Americans’ silence is

266. *Id.*

267. Note, *A Public Accommodations Challenge To The Use Of Indian Team Names And Mascots In Professional Sports*, 112 HARV. L. REV. 904, 904 (1999) (internal citations omitted).

268. For a discussion of this point, see andré douglas pond cummings, “*Lions and Tigers and Bears, Oh My*” or “*Redskins and Braves and Indians, Oh Why*”: *Ruminations on McBride v. Utah State Tax Commission, Political Correctness, and the Reasonable Person*, 36 CAL. W. L. REV. 11 (1999) (discussing the national trend of determining the offensiveness of mascots according to the standard of a reasonable member of the target group); Jack Achiezer Guggenheim, *The Indians’ Chief Problem: Chief Wahoo as State Sponsored Discrimination and a Disparaging Mark*, 46 CLEV. ST. L. REV. 211 (1998) (discussing ways to challenge an emblem that many people find offensive). *But c.f.* John B. Rhode, Comment, *The Mascot Name Change Controversy: A Lesson in Hypersensitivity*, 5 MARQ. SPORTS L.J. 141 (1994) (noting that that controversy regarding offensive mascots is a waste of time).

quite troubling from a racial reconciliation perspective. A recent, rather modest, effort to address the Indian mascot issue in Maryland illustrates this point.

After the U.S. Commission on Civil Rights recommended that schools where indigenous students are not in the majority should eliminate the use of demeaning "Indian" team names and mascots, the Maryland Commission on Indian Affairs called on Maryland schools to follow the recommendation.²⁶⁹ The Commission noted that twenty-seven schools in twelve Maryland counties had sports team names or mascots demeaning to indigenous people.²⁷⁰ The state school board decided, however, not to forbid the use of "Indian mascots," but merely recommended that schools discontinue their use.²⁷¹ Only half of the schools had abandoned their mascots a year later.²⁷² Two schools refused to change, and two others remain undecided.²⁷³ Eleven schools took no action.²⁷⁴ Frustrated, the Commission on Indian Affairs asked the Governor and a county legislative delegation to issue a resolution banning the use of Indian names and images in school sports.²⁷⁵ To date, no formal action has been taken.

Blacks comprise almost 29% of Maryland's population²⁷⁶ and are

Ronald Turner writes that black students at the University of Wisconsin were "angered by a cartoon in a campus newspaper that depicted 'a smiling Black Sambo character adjacent to the Cleveland Indians' mascot." Ronald Turner, "Little Black Sambo," *Images, and Perceptions: Professor Cohen's Critique of Professor Lawrence*, 12 HARV. BLACKLETTER J. 131, 139 (1995). This incident illustrates how some blacks fail to make the connection between the use of racially derogatory images of blacks and similar images of Native Americans.

269. Tracey A. Reeves & Manuel Perez-Rivas, *Md. Indians Seek Help to Change Team Names; Federal, State Officials Urged to Step In*, WASH. POST, June 24, 2001, at C01.

270. *Id.*

271. *Id.*

272. Stephanie Desmon, *1 School Agrees, 1 Doesn't When Told Their Teams' Logos Should Go; Native American Mascots Might Offend, Officials Say*, BALT. SUN, May 19, 2002, at 1B.

273. *Id.*

274. *Id.*

275. *Id.*

276. See Michael Hill, *How Can a Republican Win?; Upset: Odds are Against it, but Many See this Year's Maryland Gubernatorial Race as an Opportunity for the GOP*, BALT. SUN, Aug. 4, 2002, at 1F. Black Americans, however, represent only twenty-five percent of the voting population. *Id.* They constitute a majority in Prince George's County and the City of Baltimore. David Nitkin, *To Schaefer, 80, Public Life is Never Done, Ex-mayor, Governor Seeks Re-election as Comptroller; Election 2002*, BALT. SUN, June 25, 2002, at 1A. Some areas are more affluent than others, and in those areas black American earnings are comparable to whites. In Howard County, for example, black American households out-earn white households in thirty percent of the census tracts in the county—the tenth wealthiest in the nation. Jamie Smith Hopkins, *In*

represented at all levels of government in elected and non-elected positions.²⁷⁷ Yet none has spoken out publicly in support of the Commission on Indian Affairs' recommendation. Some blacks may fear that support for other racialized groups will result in less attention to black issues. Other blacks may be indifferent to race issues that do not involve them. Whatever the reason, the failure to support discrimination claims by other racialized groups impedes self healing by blacks and decreases the chance of broader support for black reparations.

Internationally, there are movements afoot in Central and Latin America by Latinas/os of African descent to obtain social and economic justice.²⁷⁸ Repeated efforts to get civil rights leaders and nationally elected black legislators to meet with activists and publicly support these efforts have proved largely unsuccessful.²⁷⁹ Individuals identified by the press as "black leaders" tend to focus

Howard, a Wealth of Diversity: Census Shows Minorities' Median Income Surpasses Whites' in Parts of County, BALT. SUN, Aug. 14, 2002, at 1A.

277. Black Americans hold approximately 8.3% of all elected offices in the state. DAVID A. BOSITIS, JOINT CTR. FOR POLITICAL & ECON. STUDIES, BLACK ELECTED OFFICIALS: A STATISTICAL SUMMARY 2000, at 20 (2002). They constitute 19.1% of the state senate and 20.6 % of the state house. *Id.* at 23. Maryland has two African American members in the U.S. House of Representatives. *Id.* at 27. Robert Bell, the Chief Justice of the Maryland Court of Appeals, the state's highest court, is an African American. C. Fraser Smith, *Bell's Sweet Victory; New Top Judge Overcomes Segregation*, BALT. SUN, Oct. 27, 1996, at 1F. Recently, Michael S. Steele, a black American, was elected Lieutenant Governor of the State. Tim Craig & Ivan Penn, *King 'Dreamed This Day Would Come,' Says Steele; Many Have High Hopes At Inauguration of Md.'s First Black Lieutenant Governor*, BALT. SUN, Jan. 16, 2003, at 9A.

278. See, e.g., Ariel E. Dulitzky, *A Region in Denial: Racial Discrimination and Racism in Latin America* (2001) (symposium paper on file with author).

279. See, e.g., *Review & Outlook: NAACP's Forgotten Brothers in Cuba*, WALL ST. J., July 21, 2003, at A10 (commenting on the failure of the NAACP to take interest in the condition of Afro-Cubans in Cuba).

In Spring, 2002, I attended a meeting in Washington, D.C. designed to convince black American civil rights organizations to support similar efforts by Afro Latinas/os in Central and South America. The head of one well-known organization expressed disinterest, saying that there were too many domestic problems and that if civil rights organizations were going to focus on external issues, they would focus on Africa. The focus on African countries rather than other colonized countries in the Americas indicates an indifference or lack of appreciation toward slavery's legacy in the Americas on the part of African Americans. Recently, however, the NAACP applied for non-governmental organization (NGO) status with the United Nations, which would allow representatives of the organization to "attend meetings of the Economic and Social Council, speak at council meetings and circulate written statements." Mike Adams, *NAACP Seeks Recognition of United Nations; Group Applies for Status as 'Non-governmental'*, BALT. SUN, Feb. 1, 2003, at 4A. According to the article, within the past year the NAACP has become more active internationally, helping "to monitor elections in Zimbabwe" and accompanying black American farmers to Cuba to discuss trade matters. *Id.*

almost entirely on domestic issues and, with the exception of largely rhetorical statements about assisting African countries and attacking apartheid in South Africa, ignore the plight of African descendants in the Diaspora. Sometimes this unwillingness to look beyond the issues affecting black Americans makes valid claims for black reparations seem ludicrous to people outside the United States who live in conditions far worse than the poorest black American. Even though blacks deserve more from their country, meaningful self-healing means looking outward and using black Americans' available political and economic power and opportunities to help others.

V. CONCLUSION

Meaningful racial reconciliation between blacks and whites in the United States, if it ever occurs, will be difficult, and probably take generations. Reconciliation requires "the establishment of a hitherto non-existent relationship of trust. . . . It requires an understanding of the other person's fears and aspirations. It necessitates the building of trust and respect for the rights and legitimacy of political opposition groupings. It does not necessarily imply forgiveness."²⁸⁰ There can be no establishment of trust between blacks and whites, however, without public dialogues, and these dialogues must include an accounting of America's unpleasant racial past.

Unfortunately, the root of anti-black racism is too deeply embedded in the American psyche to expect immediate change. Thus, black Americans, while pressing for meaningful reparations, must make better use of the unequal, but substantial, political and economic power that flows from their American citizenship. The realization of that power, through helping other subordinated people, is an important way to fight racism and other forms of subordination in and outside the United States. While not necessarily a means of achieving economic parity, global anti-racist praxis may liberate black Americans from the mental slavery of racial subordination. James Baldwin wrote: "We are responsible for the world in which we find ourselves, if only because we are the only sentient force which can change it."²⁸¹

280. Villa-Vicencio, *supra* note 220, at 240. Some scholars believe that "the magnitude of the problem . . . will make meaningful reparations for slavery unlikely, if not impossible." Brophy, *supra* note 6, at 500.

281. JAMES BALDWIN, NO NAME IN THE STREET (1972), reprinted in JAMES BALDWIN, THE PRICE OF THE TICKET 483 (1985).