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### *Remarks on the Morality and Politics of Reparations for Slavery*

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Available online at [www.yale.edu/glc/justice/mccarthy.pdf](http://www.yale.edu/glc/justice/mccarthy.pdf)

Reparations for slavery have recently become the focal issue of an increasingly broad-based movement for racial justice in this country.<sup>1</sup> The activities of the National Coalition of Blacks for Reparations in America (N'COBRA) have resulted in the adoption of reparations resolutions by city councils across the country. A number of other black organizations, ranging from the Nation of Islam to the NAACP and the Southern Christian Leadership Conference have joined the struggle. And the Reparations Coordinating Committee (RCC), centered at Harvard Law School and comprising an all-star cast of lawyers, scholars, and activists is in the process of filing a variety of lawsuits in a number of courts.<sup>2</sup> There are many reasons for this surge in interest, among them: the recent success of reparations lawsuits against Swiss banks, European insurance companies, and German corporations for harms inflicted in the Nazi past;<sup>3</sup> the central role of reparations in recent transitions to democracy in South Africa, Latin America, and elsewhere;<sup>4</sup> the precedent set by the monetary awards and official apology extended by the US Government in 1988 to Japanese-Americans illegally interned during World War II; and,

importantly, the evident failure of the civil-rights legislation of the 1960s to repair the deep-seated inequalities left behind by 350 years of legally institutionalized discrimination, together with the conservative realignment of national politics that has stalled progress toward racial justice in the USA since the 1970s.

The form that such reparations might take and the most effective path to them are variously conceived. The form and path I shall consider are those proposed by many of the most influential advocates, particularly the Reparations Coordinating Committee. Its main elements include: suing corporations and other private institutions – “successors in interest” – whose predecessors benefited from slavery and Jim Crow, as well as federal and state government agencies that sanctioned and implemented racially discriminatory practices; requiring these corporate agents – in the broad sense of bodies recognized in law as incorporated – to pay into collective funds intended to redress the legacy of centuries of legally institutionalized injustice; seeking, in addition to monetary compensation in this collective form, non-monetary forms of redress as well, both “symbolic” (e.g. public acknowledgement, apology, and commemoration) and “material” (e.g. policies, programs, and institutional reforms designed to correct imbalances in education, job training, housing, healthcare, and the like); and aiming, in the end, at federal legislation to repair the situation. This last point means that, as in many other cases of reparations – e.g. reparations for Nazi slave labor and for Japanese-American internment – judicial recourse is part of a larger strategy to involve the national government in redressing wrongs in which it was deeply implicated. It also means that for judicial recourse to succeed in its larger aims – or, many argue, even in its narrower, legal aims – coordination with a popular, political, reparations movement will be necessary.

It should be obvious that in assessing an undertaking of this sort, a great variety of considerations are relevant: moral considerations concerning the requirements of corrective justice and the righting of past wrongs; legal considerations concerning the possible bases in constitutional, statutory, or international law for pursuing compensation; political-cultural considerations concerning the importance for national reconciliation of publicly acknowledging and atoning for past injustices; and practical-political considerations concerning the aims, strategies, and likely consequences of pursuing reparations, among others. In my remarks today, I want to focus on a few key aspects of, first, the moral-political arguments for reparations, and second, the practical-political debates surrounding them.<sup>5</sup>

### *I. Remarks on the Morality of Reparations for Slavery*

The principal moral intuition behind the idea of reparations is easy to grasp. If one agent has wrongfully harmed another, then the perpetrator has a *prima facie* moral obligation to repair, so far as possible, the damage to the victim. That is to say, if there are persisting ill effects of a wrongful action and the perpetrator is in a position to rectify them in some measure, her moral obligation does not end with feelings of remorse, an admission of guilt, or an apology. She ought, so far as she can and so far as other moral obligations allow, to repair the situation in which she has placed the victim: otherwise, the victim's continued suffering would amount to a continuing harm. This is, of course, the intuition underlying the discourse of corrective or rectificatory justice from Aristotle to the present.<sup>6</sup> And it is not difficult to sketch, at least in broad outline, how a moral-political case for reparations for slavery might be constructed from this intuition within a liberal framework. Political justice is here rooted in impartiality or fairness, which requires equal respect for each person, equal rights and liberties for all, equal

treatment under the law, and equal consideration of the interests of all. There is no question that these were denied, under law, to slaves and their descendants at least into the 1960s. And there is a convincing case to be made for the continuing effects of these past injustices in the present inequalities of income, wealth, housing, health care, social standing, education, employment, and other opportunities, which characterize the situation of African-Americans in the USA.

Correcting this legacy of past injustice, making these wrongs right, so far as practically possible and morally permissible, seems clearly to be a moral-political requirement of justice as fairness.<sup>7</sup> For the USA is a continuing constitutional undertaking, an enduring “corporate agent”<sup>8</sup>: having acknowledged in the 1960s the wrongful harms to blacks it had both permitted and sponsored in previous centuries, through denial to them of equal respect, rights, treatment, and consideration, it has a moral-political obligation now to redress the continuing effects of those harms.

But this seemingly straightforward line of argument encounters formidable obstacles in a liberal-individualistic framework such as ours, among them: how to conceptualize and justify *collective* compensation and *collective* responsibility in such a framework, and how to conceive and establish the relation of *past* injustice to *present* harm.

(a) *Collective Compensation*. Like a number of other reparations advocacy groups, the Reparations Coordinating Committee favors a form of collective reparation that would lead to the establishment of trust funds, reforms, policies, and programs designed to strengthen black institutions and provide resources for overcoming the deeply entrenched, *de facto* inequalities inherited from centuries of *de jure* discrimination. Bernard Boxill has suggested a line of reasoning that could be used to support this approach.<sup>9</sup> Historically, blacks were oppressed and discriminated against *because* they were black, in a legal-political order that assumed they

deserved less than equal respect and consideration *because* of their race. When individuals are thus harmed solely *under the description* of them as members of a racial group, all members of that group suffer disadvantages, even if only in the form of the less than equal security, opportunity, and respect that attaches to membership in that group, as well as the profound stigmatization that comes with this. Since blacks have been harmed and disadvantaged as a group in just this way, they deserve compensation as a group.<sup>10</sup>

The underlying idea here can be further developed by contrasting it with one element of Janna Thompson's helpful discussion of reparations.<sup>11</sup> She elaborates a line of argument centered on the transgenerational obligations and responsibilities incurred by organized intergenerational associations and communities. Particularly in democratic societies, she notes, commitments, debts, entitlements, and the like are routinely and legitimately inherited from predecessor generations and passed on to successor generations. And citizens of such societies have a *prima facie* moral-political obligation to honor them. This general account of transgenerational obligations is then applied to the particular situation of the descendants of slaves in the USA. In that connection, however, Thompson argues that reparations are owed only to *individuals* who are members of family lines that have been historically disadvantaged by racial discrimination. She arrives at that conclusion by restricting standing in claims for reparations to individuals and "organized" intergenerational groups such as nations. By contrast, in the view proposed here "unorganized" (in her specific sense), transgenerationally persecuted groups may be, and typically are to a greater or lesser extent, socially, culturally, legally, and politically "constructed" in and through their very persecution and response to it. The group classifications and identifications thus formed may be so deeply entrenched in social structures and cultural patterns that they persist across generations, even after their legal institutionalization

has been dismantled. This is surely the case with African-Americans.<sup>12</sup> And as there are no convincing reasons to deny moral-political standing to persecuted groups who are socially constructed as groups through systematic persecution, the classifications of “race” under which African-Americans have suffered may also serve as guidelines in their claims for reparations.

The other side of the collective nature of the persecution practiced is the *collective nature of the harm suffered*. Thus a complementary, sociological line of reasoning in favor of group compensation may start from the oft-noted fact that *de jure* discrimination against blacks, which was a systemic feature of American society for most of its history, did not disappear without a trace when the laws were changed in the 1960s. It left behind entrenched *patterns* of disadvantage and *structures* of inequality that cannot effectively be dealt with on an individual basis but only through resources, policies, programs and reforms aimed precisely at repairing them, at making blacks, as a group, more nearly equal to other groups in our society. Orlando Patterson sums up this line of reasoning as follows:

[O]nly the representative actor mobilizing the agents of state can deal with ...the accumulated patterns of discrimination over long periods of time against particular groups of people that create not only generalized disabilities of a collective nature but also generalized advantages to those who benefit from the discrimination... Afro-Americans spent two-thirds of their history under a system of slavery... [O]nly they were systematically shut out of the emerging industrial revolution at the end of the nineteenth century, preventing them from developing those critical patterns of behavior and cultural tools necessary for keeping in phase with the nation's changing economy... It is impossible to measure the individual impact of such collectively accumulated Acts of History. Their effects are pervasive, collective, and diffuse... For this reason, they can be dealt with only by representative agents whose task is to correct and remedy the lingering systemic impacts...<sup>13</sup>

The remedies for such collectively accumulated, generalized disadvantages would differ from the sort of individual compensation for wrongful acts familiar to us from civil law. In dealing with “harms” of this kind we need, it seems, *a moral-political notion of repairing*

*damages* inflicted by unjust actions that is *broader than the tort model*. The collective compensation approach I want to defend appeals to a type of forward-looking argument for reparations, which Boxill signals as follows: “had it not been for slavery and discrimination, blacks as a group would be more nearly equal in income, education, and well-being to other groups ...Consequently, assuming that compensating a group for wrongful disadvantages requires bringing it to the condition it would have been in had it not been wrongfully disadvantaged, compensating blacks as a group requires making them, as a group, more nearly equal to those other groups.”<sup>14</sup> To be sure, this approach too turns on a counterfactual claim, but it is an eminently reasonable one: given that biological racism has been discredited, the most plausible answer to the question of how well African-Americans would have done, had it not been for centuries of oppression and discrimination, is surely: “About as well as other groups in the USA.” This response suggests a forward-looking use of distributive justice arguments: they could be adapted to fill out the idea of “more nearly equal.” That is to say, the basic principles of distributive justice theory could serve as general guidelines in working out the (always contestable) details of reparation programs and policies. The type of “calculation” involved in this approach is not a putatively objective search for monetary equivalents but a democratic deliberation upon the requirements of equal justice.

In addition to offering a handle on the otherwise unmanageable idea of compensating the damages of racial injustice in the USA, this approach has the added advantage of avoiding the “one-time pay-off” trap. A recurring objection to the tort model of reparation is that under it compensation settles the matter once and for all – so that, for instance, if racial inequalities persisted thereafter, there would be no further recourse. Adapting distributive justice principles to reparations purposes, as I am proposing, sets the standard of reparation in terms of doing

“about as well as” or being “more nearly equal to” other groups of citizens and thus blunts that objection.

*Collective Responsibility.* The approach to collective responsibility I shall defend supports the RCC strategy of targeting corporate agents, that is, legally constituted bodies that persist over time despite changes in personnel. In justifying that approach here, I shall focus on the agent that is central to the moral-political case for reparations: the United States of America. Treating the USA as a corporate agent distinguishes this approach from arguments for national responsibility, like David Miller’s, that turn on an idea of intergenerational communities, such as peoples or nations, whose persistence is conceived primarily in cultural rather than legal-political terms.<sup>15</sup> It is closer in this respect to the approach of Janna Thompson, who stresses the organized character of certain intergenerational groups, particularly the state-like character of politically organized groups such as nations.

In my view, the case for slavery reparations should make systematic use of the facts that the USA is a nation *state* with an unbroken constitutional history and that African-Americans were denied equal protection under the law for most of that history. Without this emphasis, arguments for slavery reparations may founder on the further fact that the non-black population of the USA derives largely from waves of post-Civil War immigration – including the most recent, post-Civil Rights wave, which now comprises some 30-40 million foreign-born citizens and 50-60 million first- or second-generation Americans. In regard to a population of this sort, it makes little sense, I think, to construct arguments for reparations turning on the claim that all non-blacks have contributed to the continuance of black inequality or at least have benefited from it. Even supposing that were true in some sense, how could we begin to conceptualize the

infinitely complex attributions of *differential* responsibility involved? And arguments that eschew individual attributions of responsibility for conceptions of national responsibility centered around *cultural* continuity, and on the sense of identification with the past it brings, lose much of their force when applied to a community shaped by successive waves of multicultural immigration. This is not true, however, of arguments that turn on the constitutional continuity of a legal-political community.

The approach I defend holds that there is *a collective responsibility of US citizens as such* for the enduring harms to African-Americans that have resulted from legally sanctioned injuries of race under earlier regimes. Each generation of citizens, whether native- or foreign-born, inherits the burdens of membership – the national debts, as it were – together with the benefits of membership. Any conceptually coherent case for bestowing upon incoming citizens full rights to the national territory, public institutions, and the like, which are the accumulated results of the actions of earlier generations of citizens – including the actions of civil rights activists, who have bequeathed to all minorities fairer structures of opportunity – is at the same time a case for their inheriting the liabilities incurred by those earlier generations.<sup>16</sup> Thus, the responsibility to rectify the continuing harms of past racial injustice accrues to the political community as a whole, not only because those wrongs were generally state sanctioned and frequently state implemented, but also because present members who share inherited benefits must by the same logic share inherited liabilities. Our national inheritance was in considerable part unjustly acquired at the expense of African-Americans; and, as a result, it is now unfairly distributed in respect to them. The issue here is not whether individual citizens' ancestors owned slaves, or whether they have personally benefited from discrimination against blacks, but that they now share in and benefit from an unjustly acquired and unfairly distributed national inheritance. *This is not a matter of*

*collective guilt but of collective responsibility; and reparation is not a matter of collective punishment but of collective liability.*

*Continuing Harm.* A crucial component of both the moral-political and the legal cases for reparations is the claim that the inequities from which African-Americans presently suffer are largely the consequences of a history of racial oppression that began with slavery. Thus, among the prerequisites for a meritorious legal claim for redress, Roy L. Brooks lists the requirements that members of the victim group continue to suffer harm and that this harm be causally connected to past injustice.<sup>17</sup> And Robert Westley, in his discussion of the legal basis for slavery reparations, notes that “the burden of the reparations argument, for which material inequality may serve as a first predicate, is to show that current disparities in material resources are causally linked to unjust and unremedied actions in the past.”<sup>18</sup> It was this requirement that led Boris Bittker, in his early (1973) and influential examination of the legal case for black reparations, to recommend that African-Americans seek reparations not for slavery – which, he held, lay too far in the causal past to be a plausible basis for reparations claims – but for the post-emancipation system of segregation and discrimination that persisted into the 1960s and could thus be causally related to contemporary harms.<sup>19</sup> For present purposes, the burdens of, and restrictions upon, causal attributions in legal settings, as well as their legal implications for reparations claims, may be left to the judicial processes now underway. My concern here is with the *morality and politics* of reparations for slavery; and significant causal relations can be convincingly established for these purposes, in the sense that *reasonable people could not reasonably reject the evidence and arguments for them.*

To some, these relations seem so obvious as not to require detailed demonstration, while to others they seem too improbable to permit thereof. As a result, both academic discussions and public debates about reparations are regularly impaired by a rather loose to-ing and fro-ing around causal claims. Part of the problem is the very deep-seated, individualistic bent of moral and political discourse in the USA. For historical reasons too complicated to go into – including the enormous influence of the immigrant experience in our culture – the belief that people’s lives are largely what they make of them, that individuals generally get what they deserve in this “land of opportunity,” is so deep and pervasive as to make social-structural factors in success and failure nearly imperceptible. Thus the view that black socioeconomic disadvantages are largely the result of character defects -- of African-Americans possessing too few of the individual virtues that enabled successive waves of immigrants to overcome prejudice and work their ways up -- is widespread among non-blacks and figures importantly in the low level of support for race-conscious programs designed to address them.<sup>20</sup>

To establish the continuing responsibility of a nation to repair continuing harms due to past injustices, one need not – and in the case of injustices that lie far enough in the past, often can not – draw a causal line *directly* from those past actions to present harms. A more complex narrative is called for – for instance, one in which the repeated refusal to acknowledge past wrongs and the continued failure to remedy them are themselves fresh wrongs that compound the original one; in which deep-seated racist attitudes are continually expressed in new and different ways; in which hierarchies of power and privilege are continuously maintained in ever changing circumstances. We are depicting what Janna Thompson calls “the history of a relationship,” which in the case of whites and blacks in the USA is a history of disrespect and domination.<sup>21</sup> Earlier episodes are linked to later ones as manifestations of the same system of racialized

domination and the same attitudes of racialized disrespect. The failure to repair the resultant injustices belongs to that same history; and that is how it is experienced and understood by the descendants of slaves themselves. On this approach, the history of racial oppression as a whole is relevant to reparations claims, for it connects earlier with later oppression and ultimately with the racialized character of current inequities. It is, moreover, these persisting injustices and the continuing failure to remedy them that gives that history its moral and political salience.

Now, one might be generally sympathetic to some such account of the role of explanatory narratives in reparations discourse and yet doubt that strong causal links could be forged by their means. In my view, such skepticism is unwarranted. By the usual standards of historical forensics, the evidence for causal links between the past oppression and present situation of African-Americans is voluminous and has only to be carefully marshaled for reparations purposes: blacks have been systematically denied equal access to land, jobs, credit, voting rights, trade unions, Civil Service positions, New Deal programs, the GI Bill, public facilities, hospitals, schools, churches, libraries, transportation, recreation, sports, parks, and so forth and so on, all the way to funeral homes and cemeteries. And since many aspects of this cradle-to-grave apartheid system persisted *de jure* into the 1950s and 1960s, their *de facto* persistence thereafter should come as no historical surprise.

One such explanatory narrative that is crucial to the reparations debate would account for the formation and persistence of the urban black ghettos that figure so centrally in the etiology of racial disparities. If, as Charles Ogletree has emphasized, the central aim of the reparations movement is to help “the poorest of the poor” break the cycle of poverty and discrimination, then the story of the black “underclass” is of critical importance.<sup>22</sup> What has to be explained is the fact that “black [residential] segregation is not comparable to the limited and transient segregation

experienced by other racial and ethnic groups, now or in the past. No group in the history of the United States has ever experienced the sustained high level of residential segregation that has been imposed on blacks in large American cities.”<sup>23</sup> For present purposes, a very significant factor was the role of the federal government in promoting racial segregation for a good part of the twentieth century, which was due in no small measure to the disproportional power of Southern Democrats in Congress. Desmond King provides a detailed account of how segregation and discrimination were institutionalized in the federal system after 1913, and of how the federal government became one of the principal instruments for propagating them throughout the country, especially through its segregated programs of assistance and training, including those of the New Deal.<sup>24</sup> In particular, the federal programs and agencies created to increase home ownership were at the same time mechanisms for excluding blacks and thus blocking a, if not the, principal avenue of wealth accumulation in the American middle class.

The Home Owners Loan Corporation (HOLC), which introduced the widespread use of long-term mortgages with uniform payments, also initiated and institutionalized the practice of “redlining” black areas, that is, of routinely assigning them the worst ratings (coded red) of risks associated with loans in various neighborhoods. In this way, the HOLC “lent the power, prestige, and support of the federal government to the systematic practice of racial discrimination in housing.”<sup>25</sup> And HOLC practices became the model for other credit institutions, private as well as public. Thus, during the 1930s and 1940s private banks relied heavily on HOLC procedures, and even on its “Residential Security Maps,” in designing their own “redlining” procedures. Moreover, the HOLC rating system decisively influenced the discriminatory underwriting practices of the Federal Housing Administration (FHA) and the Veterans Administration (VA), which, during the 1940s and 1950s “completely reshaped the residential

housing market of the United States...Loans made by the FHA and the VA were a major impetus behind the rapid suburbanization of the United States after 1945.”<sup>26</sup> The overall effect of these discriminatory lending and underwriting practices was not only to lock blacks into ghettos, but also to dry up the flow of capital into those areas, which led to steep declines in property values and widespread patterns of deterioration.

This story could be continued into the 1950s and 1960s by examining the role of local officials and the federal government in purchasing, clearing, and redeveloping slum properties, while relocating their inhabitants to high-density towers of concentrated poverty. That practice cemented a conjunction of race and class that was not only unparalleled but also self-perpetuating, seriously undermining the capacity of ghetto inhabitants to support the formation of families.<sup>27</sup> And one does not have to be a sociologist to appreciate the profound, and till now unbreakable, connection between the geographic concentration of poverty in urban black ghettos and the deterioration in them of educational facilities, employment opportunities, health care delivery, the security of person and property, and so on. In short, the institutionalized, federally sanctioned and implemented, discrimination that was instrumental in creating the black ghetto and the black underclass was largely the work of individual and corporate agents of the white majority, which was thereby continuing through transforming the institutionalized domination over blacks it inherited from slavery. And now, it appears, those ghettos and that underclass are self-reproducing, linked in a causal feedback loop of race and poverty. They won't disappear of themselves, without the political will to repair the damages of slavery and segregation.

## *II. Remarks on the Politics of Reparations*

Discussions of reparations typically stress their practical, political, and hence contextual character. They are meant to redress past wrongs, to repair the harms inflicted, and to rehabilitate their victims. So it is always appropriate and usually imperative to consider whether the means of reparation under consideration will effectively lead to the ends envisaged, what are their probable consequences and side effects, and which alternatives are available – in short, whether they are the best, or at least one good, route to repair, all things considered. Such matters are, of course, highly contextual, and so we should not expect a “general theory” of reparations for any and every circumstance. Thus Martha Minow voices the following “contextual concerns” about reparations: “1) don’t assume we know their effect in each situation; 2) consider whether reparations will promote reconciliation or instead perpetuate or deepen social divisions; 3) ask whether reparations would really improve material conditions of survivors; 4) ask if reparations and the process for securing them would in fact alter attitudes toward people at the margins.”<sup>28</sup> In the present context, the third question concerns, among other things, the likely effectiveness of reparations as a means of repairing the lingering damages from slavery and its aftermath, particularly those endured by the urban black “underclass,” who suffer simultaneously the deepest injuries of race and class.

With a view to the second question, some liberal and left critics judge the more promising path toward repairing racial inequities to be that of a “class politics” mobilizing the exploited, oppressed, and marginalized segments of the population *across* racial, ethnic, gender, and all other non-socioeconomic dividing lines. Thus, for instance, William Julius Wilson has recommended a more or less social-democratic approach to the severe problems of “the truly disadvantaged.”

[S]olutions to the broader problems of economic marginality in this country, including those that stem from changes in the global economy, can go a long way toward addressing the problems of inner-city joblessness, especially if the application of resources includes wise targeting to the groups most in need of help. Discussions that emphasize common solutions to commonly shared problems promote a sense of unity, regardless of the different degrees of severity to which these problems afflict certain groups. Such messages bring races together, not apart, and are especially important during periods of racial tension... [A] vision of interracial unity that acknowledges distinctively racial problems but nonetheless emphasizes common solutions to common problems is more important now than ever... This vision emphasizes issues and programs that concern families of all racial and ethnic groups so that individuals in these groups will come to see their mutual interests and join in a multiracial coalition...<sup>29</sup>

Adolph Reed espouses a more radical version of class politics:

[R]eparations talk is rooted in... a politics of elite-brokerage and entreaty to the ruling class and its official conscience... [It] is not equipped to challenge existing relations of power and distribution other than marginally... We are in one of those rare moments in American history – like the 1880s and 1890s and the Great Depression – when common circumstances of economic and social insecurity have strengthened the potential for building broad solidarity across race, gender, and other identities around shared concerns of daily life. These are concerns that... can be pursued effectively only by struggling to unite a wide section of the American population that is denied those essential social benefits or lives in fear of losing them.<sup>30</sup>

Of course, the overriding practical-political question here is whether this assessment of the present possibilities for class politics is correct, or at least more nearly so than many reparations advocates' diagnosis of the exhaustion of progressive energies. If class politics through coalition were in fact a more promising path to overcoming the racial disparities that haunt American life, the arguments of the critics would, it seems to me, be valid. For reparations are undeniably an uncertain route to deep and lasting change, and one that is vulnerable at every turn to the contingencies of resource scarcity, competing priorities, and partisan politics.<sup>31</sup> Reparations might still be pursued for symbolic purposes, but material repair could be achieved by more direct and less divisive means. However, if class politics is not in fact a feasible path in

present circumstances, how many more generations of poor, black, children should be sacrificed before trying a different path? A politics of reparations might offer the best chance to effect significant change in the near term.

At the same time, even the strongest proponents of judicial recourse recognize its interdependence with political recourse to a mobilized public opinion. How likely is this? Predictions are especially hazardous in this connection. If reparations were to remain primarily the business of class-action lawyers and political elites, as Reed thinks they will, then the desired symbiosis of law and politics would have failed to materialize, and with it, perhaps, the larger goals of the reparations movement. Movement leaders seem aware of this, but they have only begun to forge connections to black churches and grassroots organizations, and to seek coalitions with progressive nonblack groups.<sup>32</sup> So the substantive issue of whether such a force can and will be built around reparations is not yet decided. That will depend in large part on what reparations activists actually do to expand black participation in the movement and to form coalitions with nonblack supporters – and, of course, on how blacks and other groups, particularly white Americans, respond to them.

In any case, I will not further discuss that issue here; nor will I consider the comparative historical and sociological evidence, which suggests that reparations are a limited means of *materially* repairing the effects of massive, systematic injustices.<sup>33</sup> That same body of evidence also suggests that they can be effective as *symbolic* measures, especially when an attempt, at least, is made also to provide material redress. In my concluding remarks, I want to consider very briefly the symbolic dimension of the struggle for slavery reparations itself. To be sure, the principal symbolic fruits of reparations – public acknowledgements and public apologies, times and places of official commemoration, museums and exhibitions, revised textbooks and

curricula, a strengthening of civic trust and solidarity, and so on – could come only after reparations measures were in place and at work. But that is not the situation in which we now find ourselves.

In “*Vergangenheitsbewältigung* in the USA,” I argued that the politics of race in America was trapped in a vicious circle of racial injustice and racial resentment, and that we might, perhaps, break out of it through an intense and prolonged “national conversation on race,” if only one could be set in motion.<sup>34</sup> I want now to suggest that the reparations movement could ignite a public debate in our mass-mediated public sphere, and that this could eventually prove to be of great “public-pedagogical” significance in raising and reforming public historical consciousness.<sup>35</sup> The structured forums provided by public trials, public hearings, commissions of inquiry, and the like are settings in which the massive gap between professional historiography and public memory might be narrowed somewhat, that is to say, in which the dismal state of public awareness of the actual history of slavery and segregation in the USA, of the extent to which it has shaped our culture and institutions, and of the pervasive structural inequalities it has left behind could be improved.

Of course, among African-Americans, existing inequities are widely understood to be the consequence of systematic historical injustice. And black activists and intellectuals have repeatedly set the critical narrative of American history behind that view over against the official “master narrative” of the birth and steady growth in the American Republic of “liberty and justice for all.” But the master narrative has dominated public historical consciousness.<sup>36</sup> Versions of it have been disseminated in every generation and to every new wave of immigrants – through schooling, citizenship requirements, public celebrations, museums and memorials, the mass media, and just about every other vehicle of political culture. On the other hand, versions of

the critical narrative have, since the 1960s, become firmly established as the dominant view in the professional historiography of slavery and its aftermath. As a result, critical narratives of slavery and segregation now have the weight of scholarship on their side, whereas for almost a century after the Civil War, views much more sympathetic to the South's "peculiar institutions" predominated among professionals as well. Debates about competing national narratives are contests for public memory, with the potential to reshape political culture and thereby to influence political practice.<sup>37</sup> In regard to the history of racial oppression in America, a public debate of this kind is desperately needed, and the filing of reparations lawsuits may set one in motion.

The continued failure of mainstream politics seriously to address racial inequities has moved reparations activists to juridify them. And though the adversarial nature of lawsuits seems to speak against using them to initiate a "conversation," other aspects of judicial proceedings – such as the use of expert witnesses and the conduct of extensive discovery – speak for their possible value in public education. One might reasonably expect that, under more controlled conditions of argumentation, the weight of historical scholarship and empirical inquiry would eventually make itself felt; and with the support of a broader political movement, one might reasonably hope that this would eventually have an influence on the minds, and maybe even the hearts, of the wider American public. To be politically efficacious, this process need not result in unanimity of public historical consciousness. There is ample space for competing interpretations within the parameters set by historical scholarship, even after the deep ignorance and widespread error so politically efficacious at present have been alleviated. In the end, the invigoration of public memory and the ongoing conflict of interpretations occasioned by it would, in democratic politics, have to take effect through winning over a majority to the critical

narrative. Thus my line of argument involves a “political conjecture” that, were the reparations debate to occupy center stage in the public sphere, democratic deliberation would eventually reflect more accurate views of our interconnected history of racial domination and disrespect – and this “symbolic” gain might be achieved even if the pursuit of “material” reparations failed.

Unremembered, unacknowledged, and unredressed historical injustices on the scale of slavery and segregation cannot but de-moralize the common life of a nation, as they have ours.<sup>38</sup> Reparations harbor the potential, at least, for reshaping our public memory and re-moralizing our political culture. Though pursuing them surely runs the risk of exacerbating racial tensions, it also promises to promote racial justice by helping to convince the majority that millions upon millions of desolate lives are not “their own fault” but a national tragedy for which the nation as whole bears responsibility. Given the alternatives, or rather the lack thereof, the promise may be worth the risk.

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<sup>1</sup> For overviews, see Raymond A. Winbush, ed., *Should America Pay?* (New York: Harper Collins, 2003); Roy L. Brooks, *Atonement and Forgiveness: A New Model for Black Reparations* (Berkeley: University of California Press, 2004); and Ronald P. Salzberger & Mary C. Yuck, ed., *Reparations for Slavery* (Lanham, MD: Rowman & Littlefield, 2004).

<sup>2</sup> See Charles J. Ogletree, “Litigating the Legacy of Slavery,” *New York Times*, March 31, 2002, section IV, p. 9; and “Repairing the Past: New Efforts in the Reparations Debate in America,” *Harvard Civil Rights-Civil Liberties Law Review* 38 (2003): 279-320. The first such suit, *Alexander v. Governor of the State of Oklahoma*, was filed in February, 2003 on behalf of the living survivors of the 1921 Tulsa race riot; it argued that city and state officials were complicit in the actions of the rampaging white mob and claimed rights of action under the First, Thirteenth, and Fourteenth Amendments. The case was dismissed in 2004 on grounds of the expired statute of limitations.

<sup>3</sup> See Michael Bazler, “Unorthodox Justice,” in the spring, 2003 issue of the *Reform Judaism Magazine* published by the Union of American Hebrew Congregations; available at [www.uahc.org/rjmag/03spring/justice.shtml](http://www.uahc.org/rjmag/03spring/justice.shtml).

<sup>4</sup> See John Torpey, ed., *Politics and the Past: On Repairing Historical Injustices* (Lanham, MD: Rowman & Littlefield, 2003); and Pablo de Greiff, “The Role of Reparations in Transitions to Democracy” (New York: International Center for Transitional Justice, unpublished manuscript).

<sup>5</sup> These remarks draw upon some of my earlier discussions of coming to terms with our past of racial injustice, principally “*Vergangenheitsbewältigung* in the USA: On the Politics of the Memory of Slavery,” *Political Theory* 30(2002): 623-648; “Coming to Terms with the Past, Part II: On the Morality and Politics of Reparations for

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Slavery,” *Political Theory* 32 (2004): 750-772; and “Repairing Past Injustice: Remarks on the Politics of Reparations,” forthcoming in H. McGary, ed., *Reparations for African Americans*.

<sup>6</sup> See Rodney C. Roberts, ed. *Injustice and Rectification* (New York, NY: Peter Lang, 2003). I shall be using the term “reparation” in the general sense of repairing a harmful situation produced by a wrongful action. Thus it is not meant to contrast with, but to include, “restitution,” “compensation,” “rehabilitation,” “reconciliation,” and other concerns of rectificatory justice. This general usage is not unusual; it is adopted, for instance, in Torpey, ed., *Politics and the Past*, and in Roy L. Brooks, ed. *When Sorry Isn’t Enough* (New York: New York University Press, 1999).

<sup>7</sup> The qualification “morally permissible” is meant to signal the sorts of issues raised by Jeremy Waldron in “Superseding Historic Injustice,” *Ethics* 103 (1992): 4-28. In general, I agree with those who argue that judgments concerning reparations in concrete circumstances have to be made “all things considered.” In particular, other legitimate moral-political claims – for instance, claims having to do with property or equity – have to be taken into account and weighed against reparations claims; and rectificatory claims *may* be overridden by conflicting moral-political claims. To be sure, in the case of African-Americans, the demands of corrective and distributive justice, at least, tend to be mutually reinforcing rather than conflicting.

<sup>8</sup> I am leaving the colonial period to one side for present purposes,

<sup>9</sup> Bernard Boxill, *Blacks and Social Justice* (Totowa, NJ: Rowman & Allenheld, 1984), pp. 152-4.

<sup>10</sup> In thus arguing for group compensation, there is no need to revoke the claim that the moral-political basis for reparations lies ultimately in past violations of individuals’ rights and liberties: *individuals* were denied equal respect and treatment *because of their group classification*.

<sup>11</sup> *Taking Responsibility for the Past: Reparation and Historical Injustice* (Oxford: Polity Press, 2002).

<sup>12</sup> See Robert Gooding-Williams, “Race, Multiculturalism, and Democracy,” *Constellations* 5 (1998): 8-41.

<sup>13</sup> Orlando Patterson, *The Ordeal of Integration* (Washington, D.C.:Civitas/Counterpoint, 1997), pp. 121-22.

<sup>14</sup> Boxill, *Blacks and Social Justice*, p. 153.

<sup>15</sup> See David Miller, “Holding Nations Responsible,” *Ethics* 114 (2004): 240-268;and “Inheriting Responsibilities,” at <http://users.ox.ac.uk/~magd1534/JDG/miller.pdf>. The former essay regards nations as groups of contemporaries, while the latter views them as intergenerational communities sharing common national identities. There is some overlap between the arguments of the latter and my arguments here, but Miller explicitly rejects treating states as the primary bearers of historical responsibility, reserving that role to nations in his primarily cultural sense.

<sup>16</sup> In stressing the legal-political basis of national responsibility, this approach differs also from – but is not necessarily incompatible with – approaches that emphasize the symmetry between national pride and national shame, so that, for instance, identifying with the past accomplishments of one’s nation is morally inconsistent with refusing to acknowledge responsibility for harmful past actions. See, for instance, F. Abdel-Nour, “National Responsibility,” *Political Theory* 31 (2003): 693-719.

<sup>17</sup> Brooks, ed. *When Sorry Isn’t Enough*, p. 7.

<sup>18</sup> Robert Westley, “Many Billions Gone,” *Boston College Law Review* 40 (1998): 439.

<sup>19</sup> Boris Bittker, *The Case for Black Reparations* (New York: Random House, 1973).

<sup>20</sup> See Donald. R. Kinder and Lynn M. Sanders, *Divided by Color* (Chicago: University of Chicago Press, 1996).

<sup>21</sup> Thompson provides a convincing account of this approach in *Taking Responsibility for the Past*, where she characterizes such a narrative as “an interconnected history of wrongs.” (81) But she does not think it can do the causal job I assign it (104-107) -- mainly owing to her more legalistic understanding of causal responsibility, and because, as noted above, for her, socially-constructed groups, even when persecuted as groups, do not have the same moral-political standing as “organized” communities like nations.

<sup>22</sup> Ogletree, “Litigating the Legacy of Slavery.”

<sup>23</sup> Douglas S. Massey & Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (Cambridge, MA: Harvard University Press, 1993), p. 2. On p. 49 they point out that by 1970 the *lowest* level of spatial isolation observed for blacks in *any* major city, north or south, was greater than the *highest* isolation indexes *ever* recorded for *any* other groups in *any* American city.

<sup>24</sup> King, *Separate and Unequal: Black Americans and the US Federal Government* Oxford: Oxford University Press, 1995).

<sup>25</sup> Massey and Denton, p. 52.

<sup>26</sup> Massey and Denton, p. 53. The 1939 FHA *Underwriting Manual* states, “if a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial class.” (Cited by Massey and Denton, p. 54.)

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<sup>27</sup> A very influential analysis of this process was provided by William Julius Wilson, *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy* (Chicago: University of Chicago Press, 1987).

<sup>28</sup> *Between Vengeance and Forgiveness* (Boston, MA: Beacon, 1998), p. 132. She is recounting advice offered by Eric Yamamoto, an advocate for Japanese-Americans interned during World War II.

<sup>29</sup> William Julius Wilson, *When Work Disappears* (New York, NY: Vintage, 1997), pp. xx-xxi.

<sup>30</sup> "The Case Against Reparations," *The Progressive*, Dec. 2000, pp. 15-17.

<sup>31</sup> Consider, for instance, the ultimate failure of South Africa to implement the reparations recommendations of the Truth and Reconciliation Commission. That has had a decidedly negative effect on the public perception of the TRC's overall success.

<sup>32</sup> Bush's "faith-based initiatives" seem to have gained support in some black churches. If that were to expand, gaining support for reparations would be all the more difficult.

<sup>33</sup> For a discussion of this see Pablo de Greiff, "The Role of Reparations in Transitions to Democracy." In summing up the lessons to be learned from the comparative-historical evidence, de Greiff remarks that he has become "skeptical of the effort to turn a program of reparations into the means of solving structural problems of poverty and equality." (p. 29) He is referring to development in less-developed societies; the outlook might be less dim for historically depressed segments of highly developed societies.

<sup>34</sup> See footnote 5.

<sup>35</sup> Laura Hein makes use of the idea of public-pedagogy in her discussion of Japanese reparations for atrocities perpetrated during World War II, in "War Compensation: Claims Against the Japanese Government and Japanese Corporations for War Crimes," in Torpey, ed., *Politics and the Past*, pp. 127-147.

<sup>36</sup> Lawrie Balfour discusses the links between our "national amnesia" concerning the history of racial oppression and our failure to address its legacies in "Unreconstructed Democracy: W.E.B. Du Bois and the Case for Reparations," *American Political Science Review* 97 (2003): 33-44.

<sup>37</sup> "Public memory" is obviously a broad metaphor for socially constructed representations of the past, which may be decisively affected by historical scholarship, as they were in the German *Historikerstreit* of the 1980s. See my discussion of this in "*Vergangenheitsbewältigung* in the USA."

<sup>38</sup> I am borrowing this idea of a demoralized common life from Janna Thompson, *Taking Responsibility for the Past*, p. 68.