

THE SPIRIT OF REPARATION

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Abstract: This Article, the author of which presented the opening and closing remarks and served as moderator for the *Boston College Third World Law Journal's* reparations symposium, explores reparations for slavery from a spiritual perspective. It briefly traces the history of reparations for African Americans, beginning with General William Tecumseh Sherman's "Forty Acres and a Mule" field order in 1865 and moving through Reconstruction and Jim Crow. The Article next examines the connection between the crimes and injustices of slavery and the current plight of African Americans, arguing that monetary reparations are a viable solution and should be targeted toward Blacks who have failed to succeed economically. The author maintains, however, that the primary purpose of monetary reparations is spiritual rather than practical; America must make a tangible sacrifice in order to heal successfully the nation's deep wounds of shame, anger, and hurt from the legacy of slavery. The Article concludes with a call for the current generation to address America's unsettled and unreconciled history through reparations.

Reparation¹ is deeply rooted in the American legal system. All first-year law students during their course in contracts are made aware of the contractual injury of unjust enrichment.² The legal remedy for unjust enrichment is restitution, one of the three main remedies for

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¹ "1) The act of making amends for a wrong. 2) Compensation for an injury or wrong, especially for wartime damages or breach of an international obligation." BLACK'S LAW DICTIONARY 1301 (7th ed. 1999).

² "Iure naturae aequum est neminem cum alterius detrimento et iniuria fieri locupletorem." [By the law of nature it is fair that no one become richer by the loss and injury of another.] DIG. 50.17.206 (Pomponius, Various Readings, Book 9); see also FOUNDATIONS OF CONTRACT 112 (R. Craswell & A. Schwartz eds., 1994). "The elements that must be established to prove unjust enrichment are: 1) an enrichment; 2) an impoverishment; 3) a connection between the enrichment and the impoverishment; 4) the absence of a justification for the enrichment and impoverishment; and 5) the absence of a remedy provided by law." 66 AM. JUR. 2D *Restitution and Implied Contracts* § 12 (2001).

contractual breaches.³ Reparation, though generally thought of as applying to collective or group remedies, is merely another form of the historic and accepted remedy of restitution. Some authors have persuasively demonstrated how restitution, and thus reparation, in addition to their longstanding legal tradition, have deep spiritual roots within various religious traditions.⁴ Thus, our culture and our legal system have a long-standing affinity with these remedies. There are numerous examples in which these remedies have been applied in both individual and group situations.⁵

³ E. ALLAN FARNSWORTH, *CONTRACTS* § 12.1, at 759 (3d ed. 1999). The other two remedies protect a party's "expectation" and "reliance" interests. *Id.* § 12.1, at 756–59. An "expectation" remedy aims to put the injured party in as good a position as she would have been in had the contract been fully performed; it is meant to give the injured party the "benefit of the bargain." *Id.* § 12.1, at 756–58. A "reliance" remedy awards damages to an injured party who changed her position in reliance on a contract by incurring expenses in preparation and/or performance, thus putting her back in the position she would have been in had the contract not been made. *Id.* § 12.1, at 758. For example, consider a contract to restore a rare old guitar for \$500. If it would have cost the restorer \$350 in materials and labor to repair and restore the instrument, and the owner repudiates the contract before the restorer has done anything in reliance on it, the restorer's only loss is the \$150 profit. This is the restorer's expectation interest. If, however, the owner does not repudiate until the restorer has already spent \$300 on materials and labor, then the restorer's reliance interest is \$300, the amount she has spent in past performance. *See id.* § 12.1, at 756–59.

⁴ *See generally* THE SPIRITUAL ROOTS OF RESTORATIVE JUSTICE (Michael L. Hadley, ed., 2001) (collecting multi-faith essays that discuss restorative justice, including restitution, within the context of major spiritual traditions).

⁵ The aim in restitution is to put the party breaching the contract in the position he would have occupied had the contract never been made by "returning the benefit to the injured party that conferred it." FARNSWORTH, *supra* note 3, § 12.1, at 759. If, for example, a builder and a farmer contract to build two barns, but just as the builder finishes one barn, the farmer reneges on the contract and refuses to pay, the builder is entitled to restitution. His restitution damages will be the amount by which the farmer has been unjustly enriched, or the increase in the value to his property that the newly-built barn has conferred. *Id.* § 12.1, at 760.

In the human rights context, many oppressed groups have been granted restitution over the last century for wrongs done them. For example, both the American-Japanese Evacuation Claims Act of 1948, 50 U.S.C. app. §§ 1981–1987 (2000), and the Civil Liberties Act of 1988, 50 U.S.C. app. § 1989 (2000), sought to make restitution to Japanese Americans who were unjustly interned during World War II. The German Foundation Law was passed in 2000 to provide reparations to Jewish laborers enslaved by the Third Reich. Libby Adler & Peer Zumbansen, *The Forgetfulness of Noblesse: A Critique of the German Foundation Law Compensating Slave and Forced Laborers of the Third Reich*, 39 HARV. J. ON LEGIS. 1, 1–2 (2002). In 1994, Florida passed a "claim bill" (a bill seeking compensation for persons injured by an act or omission of the state or its officials when there is no other available remedy) that provided some redress to former residents of Rosewood and their descendants for the massacre its citizens suffered at the hands of White mobs who rioted over several days in 1923. Act of May 4, 1994, 1994 Fla. Sess. Law Serv. ch. 94-359 (West) (relating to Rosewood, Florida); C. Jeanne Bassett, *House Bill 591: Florida Compensates Rosewood*

Yet when this remedy is considered in the context of America's participation in the slave trade and slavery, it becomes an alien concept; reparation not only appears inappropriate, it is also labeled as divisive and self-serving. Despite this resistance, the idea of reparations for African Americans for the atrocities and unjust gains of slavery and the slave trade has now reached center stage. This prominence is due in large part to recent lawsuits that have been filed against corporations, and against governmental entities.⁶ But reparations for African Americans is not a new topic or issue. It has always been with us, yet we have always managed to keep it locked up in the closets of our collective consciousness. Thus this symposium issue, which contains articles from distinguished scholars and lawyers who have been intimately involved with this topic,⁷ is a bold attempt to ensure that reparations remains a topic for serious discussion, debate, and hopefully implementation. As we go through the difficult and technical issues related to reparations in the context of American slavery and racism, it is important not to lose sight of the spiritual dimensions and realities of this remedy within this context. For if understood properly, we could begin to see that reparations, like all legal remedies, are attempting to do more than just transfer resources from one party to another. The legal system, through its system of remedies, is also trying to address deep wounds and restore broken relationships. If there is a compelling scenario where physic wounds and broken spirits exist, it is within the collective experience of slavery and racism in America. Reparations, despite its long delay and its numerous procedural and substantive challenges, offers this nation a great opportunity for spiritual cleansing.

Formal discussion about reparations for African Americans dates as far back as 1865 when General William Tecumseh Sherman issued a special field order that set aside tracts of land in the sea islands and around Charleston, South Carolina for the exclusive use of Black peo-

Victims and Their Families for a Seventy-One-Year-Old Injury, 22 FLA. ST. U. L. REV. 503, 503, 504, 506-07 (1994).

⁶ See, e.g., Plaintiff's Complaint and Jury Trial Demand, *Farmer-Paellman v. FleetBoston Fin. Corp.* (E.D.N.Y. filed Mar. 26, 2002) (No. 02-CV-1862); Plaintiff's First Amended Complaint, *Alexander v. Governor of Oklahoma* (N.D. Okla. filed Feb. 28, 2003) (No. 03-CV-133).

⁷ Professor Alfred Brophy, University of Alabama Law School; Professor Keith Hylton, Boston University School of Law; Professor David Lyons, Boston University; Professor Calvin Massey, University of California, Hastings College of the Law; Professor Eric Miller, Western New England College School of Law; Professor Charles Ogletree, Harvard Law School; and Dean Alfreda Robinson, George Washington University Law School.

ple who had been enslaved.⁸ In less than half a year, the ownership of the land reverted back to Whites.⁹ Thaddeus Stevens sponsored a bill in 1867 for the redistribution of land to African Americans, but it was not passed.¹⁰ In the years that followed, society engaged in a massive campaign of subjugation and intimidation throughout the South in order to keep African Americans in their prescribed social place, instead of addressing the economic, social, and educational atrocities of slavery.¹¹ Reparations dropped off the radar screen. In its place arose a deliberate movement of regression and oppression. Laws that were intended to bring about equality were used to reinforce the existing inequality that slavery had produced.¹² For centuries this inequality, injustice, and

⁸ See W. Tecumseh Sherman, *Special Field Order No. 15: "Forty Acres and a Mule,"* reprinted in *WHEN SORRY ISN'T ENOUGH: THE CONTROVERSY OVER APOLOGIES AND REPARATIONS FOR HUMAN INJUSTICE* 365, 365-66 (Roy L. Brooks ed., 1999). General Sherman's Special Field Order No. 15, issued on January 16, 1865, was codified in Section 4 of the Freedmen's Bureau Act of 1865, in April of 1865. Freedmen's Bureau Act of 1865, ch. 90, § 4, 13 Stat. 507, 508.

⁹ ERIC FONER, *RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION 1863-1877*, at 159, 190-91 (1988). Not surprisingly, Sherman's land grants threatened the new peace among the states. See *id.* In the summer and fall of 1865, southern states' opposition to Reconstruction was increasingly difficult for the new President, Andrew Johnson, to ignore. See *id.* He succumbed to pressure and ordered that the land be returned to its pre-Civil War White owners, forcing Black families to leave their homesteads immediately. See *id.*

¹⁰ See H.R. 29, 40th Cong. (1st Sess. 1867).

¹¹ While Reconstruction immediately following the Civil War had allowed African Americans to participate in the nation's political system for the first time, the gains were short-lived. Attempts by black people in the south to vote, run for office, and exercise other civil and economic rights were met with increasing violence by whites. A year and a half after the last troops were withdrawn from duty, President Hayes himself commented that "by state legislation, by frauds, by intimidation, and by violence of the most atrocious character, colored citizens have been deprived of the right of suffrage . . . and to the protection to which the people of those States have been solemnly pledged." Vincent P. DeSantis, *Rutherford B. Hayes and the Removal of the Troops and the End of Reconstruction*, in *REGION, RACE, AND RECONSTRUCTION* 417, 436 (J. Morgan Kousser & James M. McPherson eds., 1982) (quoting President Hayes's diary entry of Nov. 12, 1878) (alteration in original).

¹² In deciding the *Civil Rights Cases*, 109 U.S. 3 (1883), which arose under the provisions of the Civil Rights Act of 1875, the Supreme Court held that the Thirteenth and Fourteenth Amendments did not, after all, grant Congress the power to "create a code of municipal law for the regulation of private rights" leaving the redress of such wrongs to the states. *Id.* at 4, 11. According to the Court, full and equal access to public accommodations was *not*, in fact, implied by the goals of the Thirteenth and Fourteenth Amendments (i.e., the elimination of the badges and incidents of slavery). *Id.* at 25. This decision assured the southern states that the federal government would not, as threatened, protect African Americans' civil rights. See *id.* at 11. Similarly, in *United States v. Cruikshank*, 92 U.S. 542 (1876), the Court held that the states, and not the federal government, had the duty to prevent private interference with African Americans' civil rights. *Id.* at 553-54. *United States v. Harris*, 106 U.S. 629 (1883), involved the killing of a prisoner in local custody and the severe beating of several others by a mob of twenty men. *Id.* at 629-32. There, the Court

even murder was rationalized away in court decisions and in public discourse. Only in 1954 with the *Brown v. Board of Education*¹³ decision did the U.S. Supreme Court finally recognize that substantive equality was nonexistent for Black people in the field of education.¹⁴ This interpretation of the Fourteenth Amendment's command was applied to other areas.¹⁵ With the exception of affirmative action, the approach to addressing the history of racism, segregation, and slavery has been a neutral principle approach. But an individualized neutral principle approach does not correct for past collective and systemic deprivations. To injure humanity in the way that slavery and the slave trade did and expect it not to have an impact on human development and progress is simply unrealistic. To place on top of centuries of injustice and unjust enrichment a series of neutral laws only drives the injury deeper into the collective souls of a people and hampers the ability of the nation to reach its full potential.

Therefore, the reason reparation is needed now is because it was not provided in 1865 or any other time thereafter. There have certainly been appeals¹⁶ and discussions, and there have been small ex-

held that Congress did not have the power to punish a private citizen for invading the rights of a fellow citizen under the Civil Right Acts—there had to be official state action. *Id.* at 644. In *Plessy v. Ferguson*, 163 U.S. 537 (1896), the Court upheld as constitutional a statute providing for segregated train cars, which imposed criminal fines on violators, stating that separate cars did not violate the Thirteenth and Fourteenth Amendments' prohibition of unequal protection of laws. *Id.* at 537–38, 552.

¹³ 347 U.S. 483 (1954).

¹⁴ *Id.* at 495; see also *Brown v. Bd. of Educ.*, 349 U.S. 294, 301 (1955).

¹⁵ In the years that followed the *Brown* decisions, the Supreme Court ordered the end of state-sponsored discrimination in a variety of contexts. See, e.g., *Gayle v. Browder*, 352 U.S. 903 (1956); *Owen v. Browder*, 352 U.S. 903 (1956) (segregated seating system on public buses in Montgomery, Alabama); *Baltimore City v. Dawson*, 350 U.S. 877 (1955) (public beaches and bathhouses); *Holmes v. City of Atlanta*, 350 U.S. 879 (1955) (city park and golf course); *Florida ex rel. Hawkins v. Bd. of Control*, 347 U.S. 971 (1954) (tax-supported law school); *Muir v. Louisville Park Theatrical Assoc.*, 347 U.S. 971 (1954) (privately-operated enterprise using a public amphitheater in Iroquois Park).

¹⁶ For instance, in 1963, during the 100th anniversary of the Emancipation Proclamation, Audley "Queen Mother" Moore formed the Reparations Committee of Descendants of United States Slaves. She canvassed the country and gathered over a million signatures to petition the U.S. government for payment of reparation to African Americans, and then presented the petition to President John F. Kennedy. *Queen Mother Witnessed Much History, THE AFRICAN AMERICAN REGISTRY* ¶ 4, at http://www.aaregistry.com/african_american_history/1022/Queen_Mother (last visited Nov. 9, 2003); see also Conrad W. Worrill, *The National Black United Front and the Reparations Movement*, in *SHOULD AMERICA PAY?* 203, 203 (Raymond W. Winbush ed., 2003). Congressman John Conyers (D-MI) has introduced legislation titled "Commission to Study Reparation Proposals for African Americans Act" at every Congressional session since 1989, without success. See, e.g., H.R. 40, 108th Cong. (2003); H.R. 3745, 101st Cong. (1989); see also Charles J. Ogletree, Jr., *Repairing the Past:*

amples of reparations for specific acts of discrimination and violence, such as in the Rosewood case where in 1994 the Florida legislature passed a bill to compensate victims and their heirs for the 1923 destruction of a small Black town and the murder of many of its residents.¹⁷ There was also the recent 1997 vote of the Oklahoma state legislature to compensate survivors and descendants of the victims of the 1921 Tulsa race riot, where about 300 Black people were killed and striving Black businesses were destroyed.¹⁸ But these are mere ex-

New Efforts in the Reparations Debate in America, 38 HARV. C.R.-C.L. L. REV. 279, 290 (2003) (discussing Representative Conyers' efforts over the last fourteen years to pass this bill). There have also been numerous individual claims brought by African Americans seeking reparation for the incidents of enslavement. *See, e.g.,* Himiya v. United States, No. 94-C-4065, 1994 WL 376850, at *1 (N.D. Ill. July 15, 1994) (suing the United States for "aiding, abetting and condoning the institution of slavery," and alleging that the "institution of slavery caused African Americans to lose their language, religion, culture and history."); *see also* Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (seeking \$100,000,000 for, among other things, "kidnapping of ancestors from Africa; forced labor; breakup of families; removal of traditional values; [and] deprivations of freedom").

¹⁷ Florida House Bill 591, passed in 1994, brought long-awaited though modest redress for a vicious massacre that occurred in Rosewood, Florida, a small community of about twenty families. Act of May 4, 1994, 1994 Fla. Sess. Law Serv. ch. 94-359 (West) (relating to Rosewood, Florida); Bassett, *supra* note 5, at 506, 520. The massacre was sparked in 1923, when a White woman from a neighboring town claimed she had been attacked by an unidentified Black man. Bassett, *supra* note 5, at 506. Many Black citizens of Rosewood were murdered at the hands of White mobs in the days that followed, and the town was burned to the ground. *Id.* at 506-07. A grand jury convened afterward to investigate the massacre returned no indictments. *Id.* at 507. In 1995, each of the five remaining survivors of the Rosewood massacre was awarded \$150,000, and fewer than 70 Rosewood residents received between \$104 and \$5000 for the loss of property. MICHAEL D'ORSO, LIKE JUDGEMENT DAY 297, 300, 318 (1996).

¹⁸ In 1997, the Oklahoma State Legislature passed Joint House Resolution No. 1035, which created the Oklahoma Commission to Study the Tulsa Race Riot of 1921, a violent riot that occurred in Tulsa's Greenwood district, then known as the "Black Wall Street of America." TULSA RACE RIOT: A REPORT BY THE OKLAHOMA COMMISSION TO STUDY THE TULSA RACE RIOT OF 1921, at iii, xiii (Feb. 28, 2001) [hereinafter TULSA RACE RIOT], available at <http://www.ok-history.mus.ok.us/trrc/freport.htm> (last visited Oct. 24, 2003). As described by the Commission's report, the riot began after a Black teenager named Dick Rowland was accused of assaulting a White female elevator operator. Scott Ellsworth, *The Tulsa Race Riot*, in TULSA RACE RIOT, *supra*, at 37, 57. In response to threats to lynch the young man that were published in a local newspaper, Black residents gathered outside the county courthouse. *Id.* at 58-61. A fight erupted between a group of Whites and Mr. Rowland's protectors that sparked an all-night bloodbath. *Id.* at 63. By the time the National Guard imposed order, 300 people had been killed and more than 1,000 homes and numerous businesses in the Greenwood district had been destroyed. John Hope Franklin & Scott Ellsworth, *History Knows No Fences: An Overview*, in TULSA RACE RIOT, *supra*, at 21, 22-23. The Riot Commission recommended payments of at least \$20,000 each to the few remaining survivors of the Tulsa riot or their descendants. ALFRED L. BROPHY, RECONSTRUCTING THE DREAMLAND: CONTEMPLATING CIVIL RIGHTS ACTIONS AND REPARATIONS FOR THE TULSA RACE RIOT OF 1921 62 (2000) (Preliminary draft of report to Tulsa Race

ceptions to the general approach that the American legal system has taken to a long history of racial injustice.

The long delay has allowed opponents to characterize the appeal for reparations as a laughing matter or an extreme political position, as opposed to a serious social dilemma and an appropriate legal remedy. The delay even makes liberal and progressive lawyers and legal scholars have doubts about the appropriateness of this approach.¹⁹ Though some accept the fact that racism is still with us, and that slavery was a horrible experience and a stain on America's historical landscape, they still are able to distance themselves from those wrongs because the injustice seems so long ago, and, some believe, so much has already been done to correct the problem. The problem is that so much of what has been done has had very little to do with the underlying wrong and the conditions it created. Most of the laws that were passed in the 1960s and 1970s were aimed at preventing discrimination and segregation from continuing and providing individual relief when it did happen.²⁰ But very little, if anything, has been done to correct the original harm or to compensate people of African descent for the original injury. This society has clothed itself in a blanket of equality and social justice rhetoric, yet when one peels away the layers one finds underneath a system of inequality that has created distinct and different societies within the midst of one nation.²¹ So many of the problems that vast numbers of African Americans face today are a direct outgrowth of this

Riot Commission) (unpublished, available online at http://www.law.ua.edu/staff/bio/abrophy/abrophy_links.html (last visited Oct. 24, 2003)).

¹⁹ Professor Bell writes:

Even so, it becomes clear that, short of a revolution, the likelihood that blacks today will obtain direct payment in compensation for their subjugation as slaves before the Emancipation Proclamation, and their exploitation as quasi-citizens since, is no better than it was in 1866, when Thaddeus Stevens recognized that his bright hope of "Forty Acres and a Mule" for every freedman had vanished

DERRICK BELL, *RACE, RACISM AND AMERICAN LAW* 46 (2d ed. 1980).

²⁰ See, e.g., Elementary and Secondary Education Act of 1965, Pub. L. 89-10, 79 Stat. 27 (codified in scattered sections of 20 U.S.C.) (authorizing cutoffs of federal aid to schools practicing de jure segregation); Voting Rights Act of 1965, Pub. L. 89-110, 79 Stat. 437 (1965) (codified as amended at 42 U.S.C. §§ 1973-1973bb-1 (2000)) (barring discrimination in all voting matters); Civil Rights Act of 1964, Pub. L. 88-352, §§ 401-410, 78 Stat. 241, 246-249 (codified as amended at 42 U.S.C. § 2000c (2000)) (barring discrimination in public accommodations and public schools); Fair Housing Act, Pub. L. 90-284, §§ 801-901, 82 Stat. 73, 81-90 (1968) (codified as amended at 42 U.S.C. §§ 3601-3619 (2000)) (barring discrimination in the sale, rental, financing and advertising of housing).

²¹ See generally ANDREW HACKER, *TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL* (1992) (discussing the role that race plays in American society).

history of slavery, segregation, and discrimination. Unless one wants to hold fast to a theory of racial inferiority,²² there is no other explanation for why infant mortality rates and incarceration levels are all higher for African Americans, and the life expectancy rate is lower.²³ Whatever negative social indicator you choose, African Americans find themselves at the bottom of the list. This is not an accident. Though some have escaped these invisible chains, many have been left behind and are trapped in cycles of crime, poverty, and disillusionment. This is not just a problem for Black people; this is a challenge for the entire nation.

In a society where the economic power and well-being of a group determines so much of its social, physical, and educational well-being, there must be economic solutions and remedies. This will never happen through an individualized civil rights approach to justice. We can not level these playing fields with marginal remedies that do not go to the heart of the problem. Certainly money alone will not cure these social injuries, but without a major infusion of economic resources into the social wounds that this society created through laws and customs, we will not only remain a separate nation, but we will never fulfill the true calling of this nation. Many African-American children are attending public educational institutions that are in need of enormous resources and new ideas about learning and achievement.²⁴

²² See, e.g., RICHARD J. HERNSTEIN & CHARLES MURRAY, *THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE* (1994). The authors of this work analyzed questionable intelligence research that they claim substantiates their theory that African Americans are genetically inferior to Whites in intellectual ability. See *id.* at 269–315.

²³ According to the Centers for Disease Control and Prevention's National Vital Statistics Report's (NVSr) preliminary data for 2001, the average African-American infant mortality rate was approximately 14.2 infant deaths per 1,000 live births. Elizabeth Arias & Betty L. Smith, *Deaths: Preliminary Data for 2001*, NAT'L VITAL STAT. REP., Mar. 14, 2003, at 28 (2003), available at <http://www.cdc.gov/nchs> (last visited Oct. 24, 2003). The rate for White children was less than half the Black rate—only 5.7 infant deaths per 1,000 live births. *Id.* NVSR's 2001 data also indicated a significant disparity in the life expectancies of Blacks and Whites: at birth, Whites had an average life expectancy of 77.7 years, while Blacks' average life expectancy was just 72.2 years. *Id.* at 25. The Bureau of Justice Prison Statistics reports that at year end 2002 there were 3,437 sentenced Black male prisoners per 100,000 Black males in the United States, compared to only 450 White male prisoners per 100,000 White males. See BUREAU OF JUSTICE, *Prison Statistics*, at <http://www.ojp.usdoj.gov/bjs/prisons.htm> (last visited Oct. 24, 2003).

²⁴ A National Center for Education Statistics study looking at Black-White differences in educational achievement reported that "black-white gaps in mathematics and reading achievement appeared at every grade studied [grade 1–12]." JONATHAN JACOBSON ET AL., NAT'L CTR. FOR EDUC. STATISTICS, *EDUCATIONAL ACHIEVEMENT AND BLACK-WHITE INEQUALITY*, at xi (2001), available at <http://nces.ed.gov/pubs2001/inequality/6.asp> (last visited Oct. 24, 2003). The measure of achievement was based on the mathematics and reading portions of the National Assessment of Educational Progress test. *Id.* at 6. Accord-

Progress will not occur through the normal incremental budgeting process at the local or state level. Any viable reparations claims must address these educational, economic, and social issues through whatever judgment is rendered or legislation enacted.

Therefore, funds and resources must be targeted toward African Americans who have failed to succeed economically. The most compelling claim for reparations, centuries after the initial violation occurred, is made by those who are still locked out of this country's dream despite years of legislative initiatives. Reparation is for children in urban areas who will not be able to leap over poverty, crime, and hopelessness in a single bound. It is for families who, despite their efforts, have been unable to break the chain of generational poverty and limited dreams.

Yet the real reason for reparation extends beyond financial compensation and redress. Embodied in the reparations movement and decision is an opportunity for this country to release itself from the psychological bonds of social and individual guilt and unresolved shame. Reparations can also serve to free Black people from the spiritual bondage that this society still subtly imposes. When this nation chose in 1865 and again in 1867 not to provide reparations to newly freed Africans, it not only postponed an appropriate legal remedy, it also placed a psycho-spiritual chain around the heart and soul of this nation. Despite the efforts of the Civil Rights movement, this chain has never been broken. This nation is still trapped in spiritual chains of indifference, guilt, and shame. Each generation has learned to live with these spiritual chains, to cover them up, to rationalize them away, or to deny that they even exist. To cover up the shame and guilt, some developed theories of inferiority to justify slavery and segregation.²⁵ Others use the present dysfunctions that exist in some Black communities to rationalize away any responsibility for this country's treat-

ing to a 2000 study by the Federal Interagency Forum on Child and Family Statistics, only 84% of Black, non-Hispanic youth completed high school, compared with 92% of White, non-Hispanic youth. FED. INTERAGENCY FORUM ON CHILD AND FAMILY STATISTICS, AMERICA'S CHILDREN: KEY NATIONAL INDICATORS OF WELL-BEING, 2002, at 53 (2002), *available at* <http://www.childstats.gov> (last visited Oct. 24, 2003).

²⁵ For example:

It is hardly to be believed that God, who is a wise Being, should place a soul, especially a good soul, in such a black ugly body It is impossible for us to suppose these creatures to be men, because, allowing them to be men, a suspicion would follow that we ourselves are not Christians.

1 BARON DE MONTESQUIEU, *THE SPIRIT OF LAWS* 238–39 (Thomas Nugent trans., rev. ed. 1899).

ment of Black people in the past.²⁶ So many White Americans bathe daily in these rivers of denial that water the soil of this land. Yet the spiritual heart of this nation is still mired in the sins of the slave trade, slavery, and years of subjugation, lynching, and murder. Buried deep in the crevices of this nation's consciousness is the stark and brutal truth of this human tragedy. I am not suggesting that a large amount of money can free us from this pattern. The money is as much symbolic as it is substantive. It is an act that must come from the heart of this nation and not just from its coffers.

This society is trapped spiritually in a race conundrum—there appears to be no escape from it. Discussions about race and racism are still among the most uncomfortable and emotionally charged conversations to have in this country. Even among individuals who share similar political perspectives, there often remains an underlying tension and tentativeness. Many Blacks and Whites who worship and praise the same god choose to do so in separate churches, temples, and mosques. There is a wall, a spiritual and psychological wall, that still separates us. Something drastic must happen to alter our understanding of the past and deepen our commitment to a common future. I believe that reparations could serve this purpose.

From a spiritual perspective, in order to reconcile people or groups that have been torn apart, something must be sacrificed. Professor Bell, in his seminal text, *Race, Racism and American Law*, eloquently made the point that Black people in this society have been the "involuntary sacrifice" to keep various groups of Whites united in this society, and to bring about a sense of equilibrium between competing political perspectives.²⁷ The time has come for Black people and their rights to cease to be the sacrificial lambs to bring about reconciliation in this country.

This quest for reparations, therefore, is as much a spiritual quest for reconciliation as it is a substantive demand for resources. For the sacrifice is meaningless if society gives up something that is of little value. Words alone will not break these spiritual chains. Even legisla-

²⁶ "Moreover, the civil rights establishment has a vested interest in the persistence of the underclass, because the scandalous pathologies of poor blacks create the public sympathy that legitimizes continuing subsidies to the black middle class." DINESH D'SOUZA, *THE END OF RACISM* 23 (1995).

²⁷ BELL, *supra* note 19, at 29–30. Examples of involuntary sacrifice include: repeal of Sherman's land grants to make peace with southern states, and Hayes-Tilden compromise effectively granting the South "home rule" with regard to Blacks. See *id.* at 29–30, 203 (connecting the decision in the *Civil Rights Cases* with that compromise).

tion, if it does not dramatically alter existing positions and serve as a sign of repentance, will not serve as the spiritual sacrifice that is so desperately needed. In various religious traditions the seriousness and sacredness of sacrifice is deeply understood and enacted. God tested Abraham to see if he would sacrifice his son in order to be more connected to God.²⁸ The Torah is filled with commands and instructions about sacrifices, especially when people have violated or failed to comply with sacred law.²⁹ Christians believe that Jesus was the sacrificial lamb to bring humanity back in line with divine order.³⁰ What will America sacrifice to bring about the long overdue reconciliation between those who suffered because of this crime against humanity and those who benefited from it?

The conundrum is that in America, it is difficult to sacrifice financial resources when we don't value those who will be the recipients of those resources. Many will oppose reparations for African Americans because they cannot see the underlying wrong, or the value in redressing those who claim they were wronged. Reparation dollars may still, therefore, prevent this society from being released from the invisible badges and incidents of slavery.³¹ Let us hope that this will not be the response of the courts or Congress to these latest appeals to break our spiritual chains. For these mental and spiritual chains that we all still carry around with us must be released in this generation. We must, in this generation, release into the universe a true spirit of justice and respect. We must release into the universe ideals of forgiveness and repentance. Let us release into the world a balm to heal the wounds of a nation broken long ago. Reparations

²⁸ *Genesis* 22:2 (New International) ("Then God said, 'Take your son, your only son, Isaac, whom you love, and go to the region of Moriah. Sacrifice him there as a burnt offering on one of the mountains I will tell you about.'").

²⁹ *E.g.*, *Leviticus* 5:1–6:7 (New International). For the sin of misappropriation of something that is sacred to God, a person must offer an unblemished ram of a certain value as a guilt-offering in order to be forgiven. *Id.* at 5:15. If a person is dishonest, he must return what he has stolen or falsely kept, make restitution of the principal, and then add one-fifth to it. On the day that he seeks atonement for his crime, he must give it to its rightful owner, and also offer a guilt-offering to the priest. *Id.* at 6:2–6:7.

³⁰ *Hebrews* 10:10 (New International) ("And by that will, we have been made holy through the sacrifice of the body of Jesus Christ once for all.").

³¹ *See* The Civil Rights Cases, 109 U.S. 3, 21 (1883) ("Congress has a right to enact all necessary and proper laws for the obliteration and prevention of slavery with all its badges and incidents . . .").

contains within it that spirit. It has the potential to be that balm in Gilead³² to heal the sin-sick soul of this nation.

There are numerous legal hurdles that stand in the way of any reparations claim. Many of these hurdles, like causation, statute of limitations, and class limitations, will be thoroughly discussed in the companion articles to this symposium issue; therefore I will not venture to address them here.³³ In addition, there are major concerns about how one would administer and distribute resources if these claims are deemed meritorious. Yet it is important that we not allow these issues and hurdles to blind us to the substantive and spiritual merit of reparations claims.

Yet some may ask, why now? The answer is, why not now? Dr. Martin Luther King once asked the question at the end of the Selma to Montgomery March, "How long?" How long would it be before Black people would receive the right to vote and be truly free? He answered his own question by saying, "not long."³⁴ Thirty-four years after his death it is still too long. Though his optimism proved right in regards to changes in the voting rights laws, it did not prove right in regards to changes in underlying conditions. We have all paid a high price for this delay. The spiritual challenge facing this nation is whether we will continue to pass this burden on to future generations, or whether we will once and for all make racial justice and healing a national priority. As some of the symposium articles eloquently indicate, we are facing one of those rare moments in the life of a society where we can choose to reverse centuries of injustice, or we can allow these legal and procedural hurdles to blind us to our social, moral, and spiritual responsibility. May the following articles, and our sobering reflection on the past, serve as a catalyst for us to remove our blinders and vividly see the limitations and unlimited potential of this nation.

³² *Jeremiah* 8:22 (New International) ("Is there no balm in Gilead? Is there no physician there? Why then is there no healing for the wound of my people?").

³³ See, e.g., Keith N. Hylton, *A Framework for Reparations Claims*, 24 B.C. THIRD WORLD L.J. 31 (2004); Calvin Massey, *Some Thoughts on the Law and Politics of Reparations for Slavery*, 24 B.C. THIRD WORLD L.J. 157 (2004).

³⁴ Martin Luther King, Jr., *Our God Is Marching On*, Address at the March on Montgomery (Mar. 25, 1965), reprinted in *A CALL TO CONSCIENCE* 119-32 (Clayborne Carson ed., 2001), available at http://www.stanford.edu/group/King/publications/speeches/Our_God_is_marching_on.html (last visited Nov. 9, 2003).