

## Chapter 16: Recommendation for California to Apologize

Reparative apologies situate the harms of the past in society's present injustices, pay tribute to victims, and encourage communal reflection to ensure the historic wrongs are never forgotten and never repeated. The international framework for reparations reflects this understanding, as set forth in the United Nations General Assembly Resolution 60/147, which delineates the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.<sup>1</sup>

The Basic Principles and Guidelines include the principle of “satisfaction.”<sup>2</sup> “Satisfaction” for victims will differ with the atrocity.<sup>3</sup> It can include a public apology that constitutes an “acknowledgement of the facts and acceptance of responsibility,” judicial and administrative sanctions against perpetrators, and commemorations and tributes to the victims, among others.<sup>4</sup>

Apologies alone are inadequate to provide justice to victims or redress wrongs.<sup>5</sup> But when combined with material forms of reparations, apologies provide an opportunity for communal reckoning with the past and repair for moral, physical, and dignitary harms.<sup>6</sup> An effective apology should both acknowledge and express regret for what was done to victims and their relatives and take responsibility for the culpability of the apologizing party.<sup>7</sup> Subtle differences in phrasing can denote unequivocal acceptance of responsibility for providing redress to victims and for making the changes necessary to guarantee non-repetition.<sup>8</sup> An apology should also be accompanied by a request for forgiveness.<sup>9</sup> As an example, when tribal leaders in Ghana performed a traditional ceremony of atonement for their role in the slave trade, they asked first for forgiveness for the horrors of slavery and their complicity in them.<sup>10</sup>

A universally satisfactory apology does not exist, because each victim group has unique needs. However, in 2012, the Inter-American Court of Human Rights determined that the following elements form a “good” apology: (1) it must be made publicly; (2) it must be made at the place where the events occurred; (3) it must acknowledge responsibility for the violations that have been committed; (4) it must be made in the presence and with the participation of a considerable

<sup>1</sup> U.N. Gen. Assem., Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Dec. 16, 2005) Res. 60/147.

<sup>2</sup> See Chapter 14, International Reparations Framework, at pp. \_\_, for a fuller discussion of satisfaction as an essential element of reparations.

<sup>3</sup> See International Center for Transitional Justice, *Reparative Justice: More Than Words: Apologies as a Form of Reparation* (2015), p. 18 [hereafter “Reparative Justice”].

<sup>4</sup> *Id.* at (IX)(22)(e)-(g). See also U.N. Gen. Assem., Responsibility of States for Internationally Wrongful Acts, (Dec. 12, 2001) Res. 56/83, Art. 37 (“Satisfaction may consist in an acknowledgment of the breach, an expression of regret, a formal apology or another appropriate modality.”).

<sup>5</sup> *Reparative Justice, supra*, at p. 1.

<sup>6</sup> Wijaya, [Public Apology as a Form of Reparation](#) (July 2019) 2 *Internat. J. of Global Community* 2, p. 1 (as of Mar. 9, 2023).

<sup>7</sup> *Reparative Justice, supra*, p. 12.

<sup>8</sup> *Id.* at p. 13.

<sup>9</sup> *Reparative Justice, supra*, p. 5.

<sup>10</sup> *Id.* at p. 8, fn. 19.

number of survivors and next of kin; (5) it must involve the highest state authority and senior state officials; and (6) it must be broadcast and disseminated fully throughout the state.<sup>11</sup>

California has issued apologies in the compensation programs enacted for the human rights abuses in its eugenics sterilization program, violence and destruction of tribal communities, and incarceration of Japanese Americans. In 2003, the Legislature, Governor Gray Davis, and Attorney General Bill Lockyer all issued formal apologies for the 1909-1979 eugenics sterilization program that forcibly sterilized patients in state hospitals and homes without true consent.<sup>12</sup> Governor Davis's apology came quickly after he was informed of the sterilizations, but the apology was issued through a press release and did not call for deeper examination of the program. Reaction to the apology was mixed, with some expressing that it had come prematurely, without adequate examination of the history and without sufficient effort to identify the individuals who would have been the recipients of an apology.<sup>13</sup> Later, in 2021, the California State Legislature passed Assembly Bill (AB) 137, apologizing for sterilizations at state prisons, creating the California Forced or Involuntary Sterilization Compensation Program, ordering the creation of memorial plaques in consultation with stakeholders, and allocating \$4.5 million for financial compensation to those sterilized by the State.<sup>14</sup>

In June 2019, Governor Gavin Newsom signed Executive Order N-15-19 issuing an apology on behalf of the State of California to California Native American Peoples for the many instances of violence, mistreatment, and neglect inflicted upon California Native Americans throughout the State's history.<sup>15</sup> Executive Order N-15-19 established a Truth and Healing Council to "bear witness to, record, examine existing documentation of, and receive California Native American narratives regarding the historical relationship between the State of California and California Native Americans in order to clarify the historical record of this relationship in the spirit of truth and healing."<sup>16</sup> This apology, however, was not accompanied by compensation or remuneration of any other form of reparations intended to redress the violence, mistreatment, or neglect.

More recently, in February 2020, the Assembly of the State of California adopted a resolution that apologized to all Americans of Japanese ancestry for the State's past actions in support of the unjust exclusion, removal, and incarceration of Japanese Americans during World War II, and for its failure to support and defend the civil rights and civil liberties of Japanese Americans during this period.<sup>17</sup> Similar to the apology to Native Americans in June 2019, this apology was not accompanied by any form of monetary compensation, nor any other affirmative act.

The Task Force recommends the Legislature build upon the structure of previous state apologies and conform to international standards for the principle of satisfaction. The Legislature must

<sup>11</sup> *Id.* at p. 18, quoting *Case of the Massacres of El Mozote and Nearby Places v. El Salvador* (Oct. 25, 2012) Inter-American Court of Human Rights, para. 357.

<sup>12</sup> Ingram, [State Issues Apology for Policy of Sterilization](#), L.A. Times (Mar. 12, 2003) (as of Mar. 9, 2023); Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 34, subd. (h), citing Sen. Res. No. 20 (2003-2004 Reg. Sess.).

<sup>13</sup> Zitner, [Davis' Apology Sheds No Light on Sterilizations in California](#), L.A. Times (Mar. 16, 2003) (as of Mar. 21, 2023).

<sup>14</sup> Assem. Bill No. 137 (2021-2022 Reg. Sess.); Galpern, [Social Justice Coalition Key to Success in California's New Sterilization Compensation Program](#) (Jan. 26, 2022) Genetics and Society (as of Mar. 9, 2023).

<sup>15</sup> Governor's Exec. Order No. [N-15-19](#) (June 18, 2019) (as of Mar. 9, 2023).

<sup>16</sup> *Ibid.*

<sup>17</sup> Assem. Res. No. 77 (2019-2020 Reg. Sess.).

apologize on behalf of the State of California and the People of California for the perpetration of gross human rights violations and genocide of Africans who were enslaved and their descendants through public apology, requests for forgiveness, censure of state perpetrators, and tributes to victims. But the Task Force does not recommend the Legislature issue an apology without taking other required steps recommended by the Task Force to conform to the international standards for satisfaction; such an apology would be hollow and ineffective.

In issuing its apology, the Legislature must formally apologize on its own behalf, and on behalf of the State of California, for all of the harms delineated in the report, and for the atrocities committed by California state actors who promoted, facilitated, enforced, and permitted the institution of chattel slavery and its legacy of ongoing badges and incidents of slavery that form the systemic structures of discrimination. California—its executive branch, courts, and Legislature—denied African Americans their fundamental liberties and denied their humanity throughout the state’s history, from before the Civil War to the present. By participating in these horrors, California further perpetuated the harms African Americans faced, imbuing racial prejudice throughout society through segregation, public and private discrimination, and unequal disbursement of state and federal funding.

The apology must also include a censure of the gravest barbarities carried out on behalf of the State by its representative officers, governing bodies, and the people. A non-exhaustive list includes:

- An avid white supremacist, the first elected California Governor, Peter Hardeman Burnett (1849-1851), encouraged laws to exclude African Americans from the State.<sup>18</sup> When the laws failed to pass, Burnett scorned the Legislature in an 1851 speech that claimed any “free persons of color” Californians would become so poor and disgruntled with unequal civil rights that they would start a race war against whites.<sup>19</sup> Later, as a California Supreme Court Justice, Burnett enforced the 1852 California fugitive slave law and ordered the return of fugitive slave Archy Lee to his enslaver.<sup>20</sup>
- John LeConte, a physicist and Confederate from South Carolina, was the first acting president of the University of California (1869-70).<sup>21</sup>
- Although California entered the Union in 1850 outlawing slavery, the California Supreme Court stated that the antislavery law in the California Constitution was only a “declaration of a principle” in a unanimous decision authored by Chief Justice Hugh C. Murray, and joined by Justice Alexander Anderson (who also wrote a concurrence) and Justice Solomon Heydenfeldt.<sup>22</sup> The California Constitution said the state would not tolerate enslavement, but California had not enacted any laws to enforce this provision

<sup>18</sup> Chapter 2, Enslavement, *supra*, at p. 73.

<sup>19</sup> State of California, Sen. J. (1851-1852 Reg. Sess.) pp. 19 – 21.

<sup>20</sup> Barber, [Archy Lee’s Quest for Freedom](#), California State Library (as of Mar. 9, 2023).

<sup>21</sup> Joseph Le Conte, [The Autobiography of Joseph Le Conte](#) (1903) at pp. 204-215; University of California, [Previous UC Presidents](#): 1869-2020.

<sup>22</sup> *In re Perkins*, 2 Cal. 424 (1852) at pp. 455-457.

and emancipate slaves.<sup>23</sup> The California Supreme Court also enforced the federal fugitive slave law until the official end of enslavement in 1865.<sup>24</sup>

- California prevented African Americans from testifying in court against a white person, leading to what one legislator called “a legislative license for the commission of crimes.”<sup>25</sup> The ban on African American testimony was repealed in 1863.<sup>26</sup>
- The California Legislature and Governor Henry Haight (1867-1871) opposed Congress’ Reconstruction civil rights laws and delayed ratifying the 14th and 15th Amendments to the federal constitution.<sup>27</sup>
- California disenfranchised African American citizens through racial barriers to voting such as poll taxes and literacy tests.<sup>28</sup>
- California prohibited interracial marriage and passed an anti-miscegenation law in its first legislative session in 1850.<sup>29</sup> The Legislature repeatedly refused to repeal the law after the California Supreme Court struck it down in 1948, and only did so 11 years later.<sup>30</sup>
- California constructed monuments, memorials, state markers, and plaques memorializing and preserving confederate culture and glorifying slavery and white supremacy.<sup>31</sup>
- From the brutality of enslavement to contemporary police killings, state and local government-sanctioned violence, such as lynchings, coercive sterilization, torture, and property destruction, inflicted death, physical injuries, and psychological harms on African Americans.<sup>32</sup> In particular, the Ku Klux Klan exerted significant political influence in local governments across California.<sup>33</sup>
- California endorsed minstrel shows.<sup>34</sup>
- California openly allowed segregation and discrimination against African Americans in the United States with respect to musicians, workers, and artists.<sup>35</sup>

<sup>23</sup> *Ibid.*

<sup>24</sup> Chapter 2, Enslavement, *supra*, at p. 72.

<sup>25</sup> Chandler, *Friends in Time of Need: Republicans and Black Civil Rights in California During the Civil War Era* (1982) 24 J. of the Southwest 319, 326-27.

<sup>26</sup> Chapter 4, Political Disenfranchisement, *supra*, at p. 136

<sup>27</sup> Chapter 2, Enslavement, *supra*, at p. 79

<sup>28</sup> Chapter 4, Political Disenfranchisement, *supra*, at pp. 135, 138, 141, 145, 149.

<sup>29</sup> Stats. 1850, ch. 140, § 3, page 424. The act, “An Act regulating marriages,” is actually older than the state itself: it passed on April 22, 1850, just over four months before California was granted official statehood.

<sup>30</sup> Interim report p. 276-277.

<sup>31</sup> Chapter 2, Enslavement, *supra*, at p. 81; Chapter 9, Control Over Creative, Cultural, & Intellectual Life, *supra*, at pp. 304, 306.

<sup>32</sup> Chapter 3, Racial Terror, *supra*, at pp. 102-117, 119.

<sup>33</sup> Chapter 3, Racial Terror, *supra*, at pp. 100-101.

<sup>34</sup> Chapter 9, Control Over Creative, Cultural, & Intellectual Life, *supra*, at pp. 302, 305.

<sup>35</sup> Chapter 9, Control Over Creative, Cultural, & Intellectual Life, *supra*, at pp. 298-302, 305-306, 308-311.

- California crafted restrictive zoning ordinances, licensing laws, fire and safety codes, and anti-nuisance laws to disrupt African American businesses and their customers. Through racially targeted enforcement, eminent domain, and outright exclusion, these restrictions disproportionately and adversely affected African Americans, especially Descendants.<sup>36</sup> California also targeted African American musicians, including hip-hop artists, and African American-owned businesses that provided leisure opportunities and safe communal spaces to African Americans in California.<sup>37</sup>
- California censored cinematic depictions of discrimination and African Americans integrating in white society.<sup>38</sup>
- California implemented anti-cruising/anti-gathering laws and curfews that disproportionately and adversely affected African Americans, especially Descendants. In 2021, California law recognized the celebrated history and culture of cruising by encouraging local officials and law enforcement to work with local car clubs to conduct safe cruising events, in effect condemning anti-cruising/anti-gathering laws.<sup>39</sup>
- California law enforcement and local governments harassed and suppressed the Black Panther Party in the 1960s and 1970s.<sup>40</sup>
- Discriminatory housing policies including redlining, residential zoning ordinances, and loan practices have produced persistent and longstanding housing segregation and inequities in home ownership in California.<sup>41</sup> By 2019, African American Californians' homeownership rate was less than in the 1960s, when certain forms of housing discrimination were legal.<sup>42</sup>
- The State of California and local governments targeted property owned by African Americans in urban renewal and development projects for unjust uses of eminent domain, often without providing just compensation.<sup>43</sup> As a result, the construction of public infrastructure in California disproportionately displaced and fractured African American communities.<sup>44</sup>
- Added in 1950 by the Proposition 10 voter initiative, Article 34 of the California Constitution requires local voter approval before any state agency can build low-income housing projects.<sup>45</sup> Proponents of Proposition 10 appealed to racist fears of integrating

<sup>36</sup> Chapter 9, Control Over Creative, Cultural, & Intellectual Life, *supra*, at pp. 300-301, 312-313.

<sup>37</sup> Chapter 9, Control Over Creative, Cultural, & Intellectual Life, *supra*, at pp. 298, 300, 312-313.

<sup>38</sup> Chapter 9, Control Over Creative, Cultural, & Intellectual Life, *supra*, at pp. 302-304, 306-307.

<sup>39</sup> Assem. Conc. Res. No. 176 (2021-2022 Reg. Sess.); On February 6, 2023, a bill was introduced in the California Legislature to remove the authorization for a local authority to adopt rules and regulations by ordinance or regulation regarding cruising. As of this publication, the bill is pending committee review. See Assem. Bill No. 436 (2023-2024 Reg. Sess.).

<sup>40</sup> Chapter 4, Political Disenfranchisement, *supra*, at p. 144.

<sup>41</sup> See generally Chapter 4, Political Disenfranchisement, *supra*, at pp. 162-192.

<sup>42</sup> Cal. Housing Finance Agency, [Black Homeownership Initiative: Building Black Wealth](#) (as of Nov. 22, 2022).

<sup>43</sup> Chapter 5, Housing Discrimination, *supra*, at pp. 171-176.

<sup>44</sup> Chapter 5, Housing Discrimination, *supra*, at p. 171.

<sup>45</sup> Cal. Const., art. XXXIV, § 1.

neighborhoods to ensure its passage.<sup>46</sup> State Senator Earl Desmond authored the argument in favor of Proposition 10 in the official ballot guide, and it was also supported by State Senator Arthur H. Breed Jr.<sup>47</sup> Article 34 has been an impediment to efficiently building affordable housing and promoting racial residential integration.<sup>48</sup>

- California enabled oil and gas production and hazardous waste facilities to be disproportionately located near African American-majority neighborhoods, leading to increased exposure to carcinogenic chemicals and greater health consequences like asthma, especially for African American children growing up in those neighborhoods.<sup>49</sup>
- State and local segregation laws historically excluded African Americans from outdoor recreation, public transit, and other public infrastructure.<sup>50</sup> “Whites Only” policies erected barriers to myriad facets of life, from where one could swim to where one could live.<sup>51</sup>
- Prior to school segregation ending in 1890, California either denied education to African American children completely or forced them to attend segregated schools with fewer resources and funding than the schools attended by white children.<sup>52</sup> Even after 1890, African American students continued to attend inadequately funded, under-resourced, and highly segregated public schools. Government policies segregated schools and school funding by neighborhood through racially-restrictive covenants, opposition to integration plans, and the use of local property tax revenue for education funding.<sup>53</sup> Unequal funding led to fewer opportunities for African American students, including less competitive courses for college admissions and heightened referral to law enforcement for school code infractions.<sup>54</sup>
- From November 1964 until 1967, Proposition 14 amended the California Constitution to nullify the 1963 Rumford Fair Housing Act and earlier fair housing provisions, and allowed California property sellers, landlords, and agents to continue to segregate communities on racial grounds when selling or renting accommodations, undermining

<sup>46</sup> Times Staff, [Why it's Been So Hard to Kill Article 34, California's 'Racist' Barrier to Affordable Housing](#), Los Angeles Times (March 14, 2022) (as of Nov. 22, 2022).

<sup>47</sup> Voter Information Guide for 1950, General Election (1950), p. 13, available at [https://www.repository.uchastings.edu/cgi?article=1517&context=ca\\_ballot\\_props](https://www.repository.uchastings.edu/cgi?article=1517&context=ca_ballot_props) (as of Mar. 20, 2023); “Proposition 10 Given Strong Support in Addresses at Santa Cruz Convention,” (Oct. 6, 1950) p. 18, available at <https://www.newspapers.com/newspage/385386487> (as of Mar. 20, 2023).

<sup>48</sup> *Ibid.*

<sup>49</sup> Chapter 7, Racism in Environment and Infrastructure, *supra*, at pp. 252-253

<sup>50</sup> Taylor, *The Environment and the People in American Cities, 1600s-1900s: Disorder, Inequality, and Social Change* (2009) p. 365; Asmelash, *Outdoor Recreation has Historically Excluded People of Color. That is Starting to Change* (Dec. 14, 2021) CNN (as of Feb. 7, 2023); interim report at pp. 258-260.

<sup>51</sup> Bennett, *Who Gets to Go to the Pool?* (June 10, 2015), <https://www.nytimes.com/2015/06/10/opinion/who-gets-to-go-to-the-pool.html> (as of Mar. 21, 2023); Del Real, *How Racism Ripples Through Rural California's Pipes* (Nov. 30, 2019).

<sup>52</sup> Chapter 6, Separate and Unequal Education, *supra*, at p. 207.

<sup>53</sup> Chapter 6, Separate and Unequal Education, *supra*, at pp. 220-223.

<sup>54</sup> Chapter 6, Separate and Unequal Education, *supra*, at pp. 223-225.

efforts to integrate schools through the desegregation of communities.<sup>55</sup> State Senator Jack Schrade authored the argument in favor of Proposition 14 for the official ballot guide,<sup>56</sup> and the *Los Angeles Times* and *Oakland Tribune* explicitly supported passage of Proposition 14.<sup>57</sup> The Proposition was also supported by the California Republican Assembly, the largest California Republican organization, and the United Republicans of California, a smaller republican organization.<sup>58</sup>

- California voters and courts intentionally segregated students by race after the *Brown v. Board of Education* Supreme Court ruling in 1954. In 1979, majority-white Californians passed Proposition 1, a law that stopped courts from ordering school desegregation plans, unless families or students suing to desegregate the schools could prove that intentional discrimination by school officials caused the segregation or a federal court could impose the same order.<sup>59</sup> The proposition was spearheaded by Alan Robbins, State Senator from the 20th District (San Fernando Valley), and was in fact also referred to as the “Robbins Amendment.”<sup>60</sup> From the mid- to late-1970s through the 1990s, courts removed or limited desegregation orders in many California districts.<sup>61</sup>
- The passage of Proposition 209 in 1996 by California voters terminated state and local government affirmative action programs in public employment, public education, and public contracting to the extent these programs involved “preferential treatment” based on race, sex, color, ethnicity, or national origin.<sup>62</sup> Proposition 209 was supported by Governor Pete Wilson (1991-1999), who authored the arguments in favor of Proposition 209 in the official voter guide, and Attorney General Daniel Lungren.<sup>63</sup> Ward Connerly, a member of the University of California Board of Regents, was chairperson of the campaign, along with Darrell Issa.<sup>64</sup> This resulted in an annual loss of more than \$1

<sup>55</sup> Cal. Const. art. I, § 26 (November 3, 1964). Reft, *How Prop 14 Shaped California’s Racial Covenants*, KCET (as of June 30, 2021).

<sup>56</sup> California Voter Guide (November 1964) at p.19, available at [https://www.repository.uchastings.edu/cgi/viewcontent.cgi?article+1675&context=ca\\_ballot\\_props](https://www.repository.uchastings.edu/cgi/viewcontent.cgi?article+1675&context=ca_ballot_props) [as of Mar. 20, 2023].

<sup>57</sup> Fleischer, “How the L.A. Times helped write segregation into California’s Constitution,” *L.A. Times* (Oct. 21, 2020) available at <https://www.latimes.com/opinion/story/2020-10-21/prop-14-ronald-reagan-la-times-vote-segregation-californias-constitution> (as of Mar. 20, 2023); Hartgraves, “A Study of Proposition 14 of the 1964 California general election,” (1967) *Univ. of the Pacific, Thesis*, p. 32, available at [https://scholarlycommons.pacific.edu/uop\\_etds/1642](https://scholarlycommons.pacific.edu/uop_etds/1642) (as of Mar. 20, 2023).

<sup>58</sup> Hartgraves, *supra*, at pp. 27, 31-32.

<sup>59</sup> Cal. Const., art. I, § 7; *School Assignment and Transportation of Pupils*, California Proposition 1 (1979).

<sup>60</sup> Voter Information Guide for 1979, Special Election (1979) p. 8, available at [https://www.repository.uchastings.edu/ca\\_ballot\\_props/865](https://www.repository.uchastings.edu/ca_ballot_props/865) (as of Mar. 20, 2023).

<sup>61</sup> Orfield and Ee, *Segregating California’s Future: Inequality and Its Alternative 60 Years after Brown v. Board of Education* (May 14, 2014) *The Civil Rights Project*, UCLA p. 3, 12-18.

<sup>62</sup> Ballot Pamp., Gen. Elec. (Nov. 5, 1996) text of Prop. 209.

<sup>63</sup> Ballot Pamp., Gen. Elec. (Nov. 5, 1996) Argument in Favor of Proposition 209, available at <https://www.vigarchive.sos.ca.gov/1996/general.pamphlet/209yesarg.htm> (as of Mar. 20, 2023); Pear, “In California, Foes of Affirmative Action See a New Day,” (Nov. 7, 1996) *N.Y. Times*, Section B, page 7, available at <https://www.nytimes.com/1996/11/07/us/in-california-foes-of-affirmative-action-see-a-new-day.html> (as of Mar. 20, 2023).

<sup>64</sup> Ballot Pamp., Gen. Elec. (Nov. 5, 1996) Argument in Favor of Proposition 209, available at <https://www.vigarchive.sos.ca.gov/1996/general.pamphlet/209yesarg.htm> (as of Mar. 20, 2023); Monteagudo,

billion for minority and women-owned businesses, perpetuating the wealth gap between races.<sup>65</sup> Proposition 209 also significantly reduced the enrollment level of African American students at California public universities.<sup>66</sup> Still further, Proposition 209 substantially limits the state from remedying the systemic racism in California, in education, housing, wealth, employment, and healthcare, which is implanted in laws, policies, and institutions that perpetuate racial inequalities. Demonstrating how challenges to equity for African Americans continue to today, Proposition 209 was reaffirmed in 2020 after California voters failed to pass Proposition 16, which would have permitted the reintroduction of these critical programs in California.

- California’s child welfare system has experienced some of the worst racial disparities in the country, with African American children suffering the highest rate of system involvement and the correspondingly heightened risks and harms associated with entering foster care.<sup>67</sup> Among other inequities, youth who enter foster care exhibit achievement gaps compared to children not involved in foster care.<sup>68</sup>
- As California Governor (1967-1975), Ronald Reagan coined the term “welfare queen” as racist coding to promote his philosophy preferring a limited government. This terminology conjures stereotypes of single Black women as hypersexualized, aggressive, and dependent on government income with frivolous spending habits.<sup>69</sup> Despite that the majority of welfare recipients are white,<sup>70</sup> this racist label blamed African American women for shortfalls in the United States’ social safety net and suggested they were more responsible for their poverty than others.<sup>71</sup> Then-Governor Reagan has also been reported to have made racist remarks regarding African delegates to the United Nations.<sup>72</sup>
- State licensure systems historically worked in tandem with unions and professional societies to exclude African American workers from skilled, higher-paying jobs.<sup>73</sup>

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“From ‘stand back’ voice on car alarms to Congress: The career of Darrell Issa,” (Jan. 13, 2018) San Diego Union-Tribune, available at <https://www.sandiegouniontribune.com/news/politics/sd-me-issa-timeline-20180113-story.html> (as of Mar. 20, 2023).

<sup>65</sup> Lohrentz, *The Impact of Proposition 209 on California’s MWBE’s* (Jan. 2015) Equal Justice Society, p. 2 (as of Mar. 18, 2022).

<sup>66</sup> Watanabe, *Prop. 209’s Affirmative Action Ban Drove Down Black and Latino UC Enrollment and Wages, Study Finds*, (Aug. 22, 2020) L.A. Times (as of June 22, 2021); Bleemer, *Affirmative Action, Mismatch, and Economic Mobility After California’s Proposition 209*, Center for Studies in Higher Education, U.C. Berkeley (Aug. 2020) (as of June 22, 2021); Harper et al., *Access and Equity*, supra, at fn. 46, p. 401.

<sup>67</sup> [Children in Foster Care, by Race/Ethnicity - Kidsdata.org](https://kidsdata.org/) (as of Nov. 29, 2022).

<sup>68</sup> Chapter 8, *Pathologizing Black Families*, supra, at p. 284.

<sup>69</sup> Chapter 8, *Pathologizing Black Families*, supra, at p. 279; Brockell, [She was Stereotyped as ‘The Welfare Queen.’ The Truth was More Disturbing, a New Book Says](#) (May 21, 2019) Washington Post (as of Mar. 13, 2023).

<sup>70</sup> King, [New Interactive Data Tool Shows Characteristics of Those Who Receive Assistance From Government Programs](#) (May 24, 2022) United States Census Bureau (as of Mar. 13, 2023).

<sup>71</sup> Chapter 8, *Pathologizing Black Families*, supra, at p. 279.

<sup>72</sup> Naftali, *Ronald Reagan’s Long-Hidden Racist Conversation with Richard Nixon*, The Atlantic (July 30, 2019).

<sup>73</sup> Chapter 10, *Stolen Labor and Hindered Opportunity*, supra, at p. 332.



- State and local governments failed to meaningfully protect the equal rights of African Americans workers and job applicants, denying African Americans secure jobs, higher pay, and career advancement, particularly in public-sector employment.<sup>74</sup>
- California law enforcement disproportionately stops, arrests, injures, and kills people perceived to be Black or African American.<sup>75</sup>
- Partially as a direct result of the above, African Americans are overrepresented in state correctional facilities, and African American youth are overrepresented in juvenile facilities.<sup>76</sup> Consequently, the collateral effects of arrests and convictions also disproportionately impact African Americans in California.
- The California Constitution continues to permit involuntary servitude as a form of criminal punishment, an “exception” that disproportionately harms African Americans given the over-policing and over-incarceration of African American Californians and other biases in the criminal legal system.<sup>77</sup>
- California historically barred African Americans from serving on juries.<sup>78</sup> Today, California prosecutors’ discriminatory use of peremptory challenges continues to exclude African Americans from juries.<sup>79</sup>
- African American Californians experience persistent discrimination in healthcare services and access through inaccurate diagnoses, use of involuntary force, high costs, and a lack of culturally-competent services.<sup>80</sup> As a result, African Americans suffer disparate health outcomes. African American birthing people experience significantly higher rates of maternal mortality and infant death than any other ethnic groups.<sup>81</sup> The life expectancy of an average African American Californian is 75.1 years, six years shorter than the state average. Compared with white Californians, Black Californians are more likely to have diabetes, die from cancer, or be hospitalized for heart disease.<sup>82</sup>
- African American physicians are underrepresented in California’s medical field, further exacerbating the inequities in the healthcare system.<sup>83</sup>

<sup>74</sup> Chapter 10, Stolen Labor and Hindered Opportunity, *supra*, at pp. 344-348, 353.

<sup>75</sup> Chapter 11, An Unjust Legal System, *supra*, at pp. 379-381.

<sup>76</sup> Chapter 11, An Unjust Legal System, *supra*, at pp. 385-386.

<sup>77</sup> See Cal. Const. art. I, § 6

<sup>78</sup> The California Civil Practice Act, Stats. 1851, ch. 1, § 394, p. 113; The California Criminal Act of 1850, Stats. 1850, ch. 99, § 14, p. 230.

<sup>79</sup> Semel et al., *Whitewashing the Jury Box: How California Perpetuates the Discriminatory Exclusion of Black and Latinx Jurors* (June 2020), Berkeley Law Death Penalty Clinic (as of Apr. 26, 2022).

<sup>80</sup> See Chapter 12, Mental and Physical Harm and Neglect, *supra*, at pp. 407-436.

<sup>81</sup> Chapter 12, Mental and Physical Harm and Neglect, *supra*, at p. 427-428.

<sup>82</sup> Executive Report, *supra*, at p. 15.

<sup>83</sup> Chapter 12, Mental and Physical Harm and Neglect, *supra*, at p. 419.

- White people comprise 39 percent of the state’s adult population yet are 66 percent of California’s active licensed attorneys, while African Americans are 6 percent of the adult population in California and only 3 percent of all attorneys.<sup>84</sup>
- The eugenics movement thrived in California and thousands of African Americans were forcibly sterilized or were the subjects of medical experiments without consent.<sup>85</sup> State psychological institutions contributed to the over-incarceration, forced sterilization, and denial of educational opportunities for African Americans in California.<sup>86</sup>

In addition to acknowledging these and other of the atrocities committed by the State, as delineated in this report, the Legislature’s formal apology should also acknowledge California’s responsibility to repair the harms and guarantee non-repetition. To be effective, a considerable number of survivors and their relatives must participate in the development of the apology. As occurred with the apology to California tribal communities, the Legislature should establish a program or government body, such as the California American Freedman Affairs Agency, to facilitate listening sessions that allow victims and their relatives to narrate personal experiences and recount specific injustices caused by the State of California. The listening sessions should inform the language of the Legislature’s apology and the methods enacted by the Legislature to satisfy victims. In rendering its apology, the Legislature should also find a way to effect specific recognition of all who come forward to participate in these listening sessions and share their personal stories of harm, loss, and deprivations of liberty.

Finally, the Legislature should order the commission of plaques or other public commemorative tributes to secure communities’ memory of the victims and the injustices, as occurred in California’s apology for forced sterilizations. Physical markers of past atrocities serve as reminders of the terror and harm and ensure the collective memory does not gloss over the past. Created in collaboration with the victims of the atrocities delineated in this report and their families and advocates, plaques and memorials should honor survivors and raise awareness of Descendants’ ongoing struggle for justice.

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<sup>84</sup> The State Bar of California, Diversity of 2022 California Licensed Attorneys, at <https://publications.calbar.ca.gov/2022-diversity-report-card/diversity-2022-california-licensed-attorneys> (as of Mar. 15, 2023).

<sup>85</sup> Chapter 12, Mental and Physical Harm and Neglect, *supra*, at p. 420.

<sup>86</sup> Chapter 12, Mental and Physical Harm and Neglect, *supra*, at p. 425.